THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 5

Chapters 18 through 20

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

D. S. TUSSEY, K. S. MAWYER, K. J. KENNEDY
AND F. J. PAYNE

Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 5 contains the general laws of a permanent nature enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 18 through 20 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

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The General Statutes of North Carolina
1994 Cumulative Supplement

VOLUME 5

Chapter 18B.
Regulation of Alcoholic Beverages.

Article 1.

General Provisions.

Sec.
18B-101. Definitions.
18B-102. Manufacture, sale, etc., forbidden except as expressly authorized.
18B-103. Exemptions.

Article 2.

State Administration.

18B-200. North Carolina Alcoholic Beverage Control Commission.
18B-201. Conflict of interest.

Article 3.

Sale, Possession, and Consumption.

18B-301. Possession and consumption of fortified wine and spirituous liquor.
18B-302. Sale to or purchase by underage persons.
18B-303. Amounts of alcoholic beverages that may be purchased.
18B-304. Sale and possession for sale.

Article 4.

Transportation.

18B-401. Manner of transportation.
18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.

Article 5.

Law Enforcement.

18B-501. Local ABC officers.
18B-502. Inspection of licensed premises.

Sec.
18B-503. Disposition of seized alcoholic beverages.
18B-504. Forfeiture.

Article 6.

Elections.

18B-600. Places eligible to hold alcoholic beverage elections.
18B-601. Election procedure.
18B-603. Effect of alcoholic beverage elections on issuance of permits.
18B-604. Timing and effect of subsequent elections.

Article 7.

Local ABC Boards.

18B-702. Financial operations of local boards.

Article 8.

Operation of ABC Stores.

18B-804. Alcoholic beverage pricing.
18B-805. Distribution of revenue.

Article 9.

Issuance of Permits.

18B-900. Qualifications for permit.
18B-901. Issuance of permits.
18B-902. Application for permit; fees.
18B-903. Duration of permit; renewal and transfer.
18B-904. Miscellaneous provisions concerning permits.
18B-906. Applicability of Administrative Procedure Act.

Article 10.

Retail Activity.

18B-1000. Definitions concerning establishments.

Sec.
18B-1001. Kinds of ABC permits; places eligible.
18B-1004. Hours for sale and consumption.
18B-1006. Miscellaneous provisions on permits.
18B-1007. Additional requirements for mixed beverages permittees.

Article 11.

Commercial Activity.

18B-1104. Authorization of brewery permit.
18B-1106. Authorization of wine importer permit.
18B-1108. Authorization of malt beverages importer permit.
18B-1109. Authorization of malt beverages wholesaler permit.
Sec.
18B-1113. Authorization of nonresident malt beverage vendor permit.
18B-1114. Authorization of nonresident wine vendor permit.
18B-1114.1. Authorization of winery special event permit.
18B-1115. Commercial transportation.
18B-1116. Exclusive outlets prohibited.

Article 12.

Wine Distribution Agreements.

18B-1214. Prohibited practices enumerated.

Article 13.

Beer Franchise Law.

18B-1303. Filing of distribution agreement; no discrimination.

ARTICLE 1.

General Provisions.

§ 18B-100. Purpose of Chapter.

Local Modification. — (As to this Chapter) city of Reidsville: 1989 (Reg. Sess., 1990), c. 957, ss. 1, 5; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

For additional modifications to this section, see the main pamphlet.

CASE NOTES

For a case discussing the development of alcoholic beverage control laws, see Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(1) "ABC law" or "ABC laws" means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) "ABC permit" or "permits" means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, "ABC permit" or "permit" means a presently valid permit.

(3) "ABC system" means a local board and all ABC stores operated by it, its law-enforcement branch, and all its employees.

(4) "Alcoholic beverage" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, in-

cluding malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) "ALE Division" means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(5a) "Bailment surcharge" means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

(6) "Commission" means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(7) "Fortified wine" means any wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.

(8) "Local board" means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703. A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission.

(9) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%), alcohol by volume.

(10) "Mixed beverage" means either of the following:
   a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
   b. A premixed cocktail served from a closed package containing only one serving.

(11) "Nontaxpaid alcoholic beverage" means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(12) "Person" means an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit.

(13) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(13a) "Special ABC area" means an area that meets all of the following requirements:
   a. Has fewer than 500 permanent residents.
   b. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in at least two cities.
   c. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members,

was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal services.

(14) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:
- a. Is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between Milepost 305 and 460.
- b. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in at least one city.

(15) "Unfortified wine" means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 2; c. 1285, s. 1; 1983, c. 435, s. 41; 1985, c. 69; 1987, c. 443, s. 1; 1989, c. 629, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 5; 1991 (Reg. Sess., 1992), c. 920, ss. 1, 10; 1993, c. 415, ss. 1, 2.)

Effect of Amendments. —

The 1989 (Reg. Sess., 1990) amendment, effective July 27, 1990, deleted "a" preceding "1000 acres" in paragraph (13a)(3)(a).

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, in subdivision (10) inserted "either of the following" in the present introductory language, added the subdivision designation a, and added subdivision b, and in subdivision (13a), in the introductory language inserted "city or" and substituted "500" for "100", and in subdivision (3) inserted "or off-premises" in the introductory language, and substituted "500 acres" for "1000 acres" in subdivision (a).

The 1993 amendment, effective July 20, 1993, rewrote subdivision (13a), and added subdivision (14a).

§ 18B-102. Manufacture, sale, etc., forbidden except as expressly authorized.

(a) General Prohibition. — It shall be unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law.

(b) **(Effective October 1, 1994 — See editor's note)** Violation a Class 1 Misdemeanor. — Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a Class 1 misdemeanor. In addition the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505. (1923, c. 1, s. 1; C.S., s. 3411(a); 1937, c. 49, s. 24; c. 411; 1939, c. 158, s. 501; 1941, c. 339, ss. 1, 3, 4; 1945, c. 780; c. 903, ss. 1, 3, 10; 1971, c. 872, s. 1; 1973, c. 476, s. 193; c. 1014; 1975, c. 329; c. 411, s. 2; 1977, 2nd Sess., c. 1138, s. 1; 1979, c. 683, s. 1; 1981, c. 412, s. 2; 1989, c. 800, s. 1; 1993, c. 539, s. 310; 1994, Ex. Sess., c. 14, s. 29; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (b) substituted "Class 1 misdemeanor" for "misdemeanor and upon conviction shall be punished by a fine, by imprisonment for not more than two years, or both".

The 1994 Extra Session amendment by c. 14, s. 29, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, inserted the first occurrence of "Class 1" in subsection (b).

§ 18B-103. Exemptions.

The following activities shall be permitted:

(1) The use of ethyl alcohol for scientific, chemical, pharmaceutical, mechanical, and industrial purposes;

(2) The use of ethyl alcohol by persons authorized to obtain it tax free, as provided by federal law;

(3) The use of ethyl alcohol in the manufacture and preparation of any product unfit for use as a beverage;

(4) The use of alcoholic beverages by licensed physicians, druggists, or dental surgeons for medicinal or pharmaceutical purposes; or the use of alcoholic beverages by medical facilities established and maintained for the treatment of patients addicted to the use of alcohol or drugs;

(5) The use of grain alcohol by college, university or State laboratories, and by manufacturers of medicine, for compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes;

(6) The manufacture, importation, and possession of denatured alcohol produced and used as provided by federal law;

(7) The manufacture or sale of cider or vinegar;

(8) The possession and use of unfortified wine or fortified wine for sacramental purpose by any organized church or ordained minister, including in public school buildings when the use of those buildings is approved by the local school board;

(9) The possession and use of alcohol acquired for controlled-drinking programs as authorized under G.S. 20-139.1(g);

(10) The use of spirituous liquor in the manufacture of flavors or flavoring extracts that are unfit for beverage use. (1923, c. 1, ss. 4, 19, 20; C.S., s. 3411(d), (s), (t); 1935, c. 1141; 1971, c. 872, s. 1; c. 1233; 1981, c. 412, s. 2; c. 747, s. 36; 1981 (Reg. Sess., 1982), c. 1262, s. 3; 1983, c. 435, s. 6; 1985, c. 566, s. 2; 1993, c. 127, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 7, 1993, added subdivision (10).

ARTICLE 1A.

Compensation for Injury Caused by Sales to Underage Persons.

§ 18B-120. Definitions.

Legal Periodicals. —

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Quoted in Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

§ 18B-121. Claim for relief created for sale to underage person.

Legal Periodicals. — For note, "The Recognition of Social Host Liability in North Carolina — Hart v. Ivey," see 15 Campbell L. Rev. 207 (1993).

CASE NOTES

Claim Barred by Negligence. — Plaintiff's wrongful death claim against a provider of alcohol alleging wilful and wanton negligence for serving the visibly intoxicated decedent alcohol after being requested to refrain from serving him was barred by the decedent's own actions in driving his vehicle while highly intoxicated. Sorrells v. M.Y.B. Hospitality Ventures, 332 N.C. 645, 423 S.E.2d 72 (1992).

Cited in Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

§ 18B-123. Limitation on damages.

CASE NOTES

Stated in Stutts v. Adair, 94 N.C. App. 227, 380 S.E.2d 411 (1989).

ARTICLE 2.

State Administration.

§ 18B-200. North Carolina Alcoholic Beverage Control Commission.

(a) Creation of Commission; compensation. — The North Carolina Alcoholic Beverage Control Commission is created to consist of a chairman and two associate members. The chairman shall devote his full time to his official duties and receive a salary fixed by the General Assembly in the Current Operations Appropriations Act. The associate members shall be compensated for per diem, subsistence and travel as provided in Chapter 138 of the General Statutes.

(b) Appointment of Members. — Members of the Commission shall be appointed by the Governor to serve at his pleasure.

(c) Vacancy. — The Governor shall fill any vacancy on the Commission by appointing a successor to serve at the Governor's pleasure. If the chairman's seat becomes vacant, the Governor may designate either the new member or an existing member of the Commission as the chairman.

(d) Employees. — The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission. The Commission shall appoint at least one employee to make investigations, hold hearings requested under G.S. 18B-1205, and represent the Commission in contested case hearings or perform any other duties authorized by Chapter 150B. (1937, c. 49, ss. 2, 3; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1963, c. 916, s. 1; 1965, c. 1102, ss. 1, 2; 1969, c. 294, ss. 1, 2; 1971, c. 872, s. 1; 1979, c. 336; 1981, c. 412, s. 2; 1983, c. 717, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 827, s. 1; 1993, c. 415, s. 3.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, in subsection (d), substituted "employee" for "hearing officer with authority" and substituted "hearings requested under G.S. 18B-1205, and represent the Commission in contested case hearings or" for "hearings, and."

§ 18B-201. Conflict of interest.

(a) Financial Interests Restricted. — No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. — The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. — Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member's spouse or any person related to him by blood to a degree of first cousin or closer in any way benefits, directly or indirectly, from the transaction unless:

(1) The member whose relative benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member whose spouse or relative is benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction. (1981, c. 412, s. 2; 1993, c. 415, s. 4.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, in subsection (a), substituted "that person's family" for "his household", substituted "that person" for "him" following "related to", inserted "to the first degree" following "blood or marriage", and made other stylistic changes.

ARTICLE 3.

Sale, Possession, and Consumption.

§ 18B-300. Purchase, possession and consumption of malt beverages and unfortified wine.

CASE NOTES

Cited in State v. Swift, 105 N.C. App. 550, 414 S.E.2d 65 (1992).

§ 18B-301. Possession and consumption of fortified wine and spirituous liquor.

(a) Possession at Home. — It shall be lawful, without an ABC permit, for any person at least 21 years old to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or a temporary residence, such as a hotel room.

(b) Possession on Other Property. — It shall be lawful, without an ABC permit, for a person to possess for his personal use and the use of his guests not more than eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, at the following places:

(1) The residence of any other person with that person's consent;

(2) Any other property not primarily used for commercial purposes and not open to the public at the time the alcoholic beverage is possessed, if the owner or other person in

charge of the property consents to that possession and consumption;

(3) An establishment with a brown-bagging permit as defined in G.S. 18B-1001(7).

(c) Special Occasions. — It shall be lawful for a person to possess, without a permit and not for sale, any amount of fortified wine or spirituous liquor for a private party, private reception, or private special occasion, at the following places:

(1) His home or a temporary residence, such as a hotel room;

(2) Any other property not primarily used for commercial purposes, which is under his exclusive control and supervision, and which is not open to the public during the event;

(3) The licensed premises of any business for which the Commission has issued a special occasions permit under G.S. 18B-1001(8), if he is the host of that private function and has the permission of the permittee.

(d) Consumption. — It shall be lawful for a person to consume fortified wine and spirituous liquor in any place where it is lawful for him to possess those alcoholic beverages under subsections (a) through (c).

(e) Incident to Sale. — It shall be lawful to possess fortified wine and spirituous liquor at any place, such as an ABC store, where possession is a necessary incident to lawful sale. Consumption at such a place shall be unlawful unless the establishment has a permit authorizing consumption on the premises as well as sale.

(f) Unlawful Possession or Use. — As illustration, but not limitation, of the general prohibition stated in G.S. 18B-102(a), it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:
  a. On the premises of an ABC store, or
  b. Upon any property used or occupied by a local board, or
  c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

(7) Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c.

411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; c. 747, s. 39; 1983, c. 917, s. 1; 1985, c. 566, s. 1; 1991, c. 459, s. 1; 1993, c. 508, s. 1.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, in the introductory language of subsection (b) substituted "five" for "four" in two places.

The 1993 amendment, effective July 1, 1993, in subsection (b) substituted "eight liters" for "five liters" twice.

§ 18B-302. Sale to or purchase by underage persons.

(a) Sale. — It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase or Possession. — It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages.

(c) **(Effective October 1, 1994 — See editor's note)** Aider and Abettor.

(1) By Underage Person. — Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. — Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. — It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Use of Identification. — It shall be unlawful for any person to obtain or attempt to obtain alcoholic beverages in violation of subsection (b) of this section by using or attempting to use:

(1) A fraudulent or altered driver's license; or

(2) A fraudulent or altered identification document other than a driver's license; or

(3) A driver's license issued to another person; or
(4) An identification document other than a driver's license issued to another person.

(f) Allowing Use of Identification. — It shall be unlawful for any person to permit the use of his driver's license or any other identification document of any kind by any person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. — The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of:
(1) A violation of subsection (e) or (f) of this section; or
(2) A violation of subdivision (c)(1) of this section; or
(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. — Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(i) Purchase or Possession by 19 or 20-Year Old. — A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs. (1933, c. 216, s. 8; 1959, c. 745, s. 1; 1967, c. 222, s. 3; 1969, c. 998; 1971, c. 872, s. 1; 1973, c. 27; 1977, 2nd Sess., c. 1138, s. 2; 1979, c. 683, s. 2; 1981, c. 412, s. 2; c. 747, ss. 40, 41; 1983, c. 435, ss. 32, 35; c. 740, ss. 1, 2; Ex. Sess., c. 5; 1985, c. 141, ss. 2-3; 1993, c. 539, s. 311; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (c)(1) substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine up to five hundred dollars ($500.00) or imprisonment for not more than six months, or both, in the discretion of the court"; and in subdivision (c)(2) substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine of up to two thousand dollars ($2,000) or imprisonment for not more than two years, or both, in the discretion of the court".

Legal Periodicals. —
For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

The statutory scheme as set out in the present Chapter 18B prohibits any sale, possession or giving of alcohol or malt beverages to an underaged person or aiding and abetting the sale or possession whether by a legally licensed commercial vendor, the county bootlegger or a neighbor down the street. Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

Violation Not Negligence Per Se. — This section is not a public safety statute; a violation is not negligence per se. Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992).

Duty of Social Hosts Not to Serve to Intoxicated Person. — Defendants were under a duty to the people who travel on the public highways not to serve alcohol to an intoxicated individual who was known to be driving, and automobile accident victim stated a claim for relief based on established negligence principles. Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992).

§ 18B-303. Amounts of alcoholic beverages that may be purchased.

(a) Purchases Allowed. — Without a permit, a person may purchase at one time:

(1) Not more than 80 liters of malt beverages, other than draft malt beverages in kegs;
(2) Any amount of draft malt beverages in kegs;
(3) Not more than 20 liters of unfortified wine;
(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined.

(b) Unlawful Purchase. — Except as provided in subsection (c) and in Article 11, it shall be unlawful for any person to purchase, or for any person to sell, an amount of alcoholic beverages greater than that stated in subsection (a).

(c) Greater Amounts. — Amounts of alcoholic beverages greater than those listed in subdivisions (a)(3) and (a)(4) may be purchased with a purchase-transportation permit under G.S. 18B-403. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; 1989, c. 553, s. 1; 1993, c. 508, s. 2.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in subdivision (a)(4) substituted "eight liters" for "five liters" twice.

§ 18B-304. Sale and possession for sale.

(a) Offense. — It shall be unlawful for any person to sell any alcoholic beverage, or possess any alcoholic beverage for sale, without first obtaining the applicable ABC permit and revenue licenses.

(b) Prima Facie Evidence. — Possession of the following amounts of alcoholic beverages, without a permit authorizing that possession, shall be prima facie evidence that the possessor is possessing those alcoholic beverages for sale:

(1) More than 80 liters of malt beverages, other than draft malt beverages in kegs;
(2) More than eight liters of spirituous liquor; or
(3) Any amount of nontaxpaid alcoholic beverages. (1913, c. 44, s. 2; 1915, c. 97, s. 8; 1923, c. 1, ss. 2, 6, 10; C.S., ss. 3379,

3411(b), (f), (j); 1937, c. 49, ss. 13, 15; 1945, c. 635; 1949, c. 1251, s. 2; 1951, c. 850; 1955, c. 560; 1957, c. 984; c. 1235, s. 1; 1963, c. 932; 1967, c. 222, ss. 4, 6; 1969, c. 789; 1971, c. 872, s. 1; 1975, c. 654, s. 4; 1977, c. 176, ss. 1-3; 1981, c. 412, s. 2; c. 747, s. 42; 1989, c. 553, s. 2; 1993, c. 508, s. 3.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in subdivision (b)(2) substituted "eight liters" for "five liters".

§ 18B-305. Other prohibited sales.

CASE NOTES

Purpose of This Section. — The general purpose of § 18A-34 (now § 18B-305(a)) is "(1) the protection of the customer from adverse consequences of intoxication and (2) the protection of the community at large from the injurious consequences of contact with an intoxicated person." Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914, modified on other grounds, 332 N.C. 299, 420 S.E.2d 174 (1992).

ARTICLE 4.

Transportation.

§ 18B-401. Manner of transportation.

(a) **(Effective October 1, 1994 — See editor's note)** Opened Containers. — It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine. Violation of this subsection shall constitute a Class 3 misdemeanor.

(b) Taxis. — It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. — The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971,

c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; c. 747, s. 45; 1983, c. 435, s. 7; 1989, c. 553, s. 3; 1993, c. 508, s. 4; c. 539, s. 312; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 508, s. 4, effective July 1, 1993, in the second sentence of subsection (b), substituted "eight liters" for "five liters".

Session Laws 1993, c. 539, s. 312, effective October 1, 1994, in the last sentence of subsection (a) substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine of twenty-five dollars ($25.00) to five hundred dollars ($500.00), imprisonment for not more than 30 days, or both".

§ 18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.

(a) Designated Employee. — A mixed beverages permittee may designate an employee to purchase and transport spirituous liquor as authorized by the permittee's permit.

(b) Issuance. — If mixed beverages sales have been approved for an establishment under the last paragraph of G.S. 18B-603(d) or under G.S. 18B-603(e), the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located.

(c) Designated Store. — A local board may designate a store within its system to make sales to mixed beverages permittees.

(d) Size of Bottles. — A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of 355 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission. (1981, c. 412, s. 2; c. 747, ss. 46, 47; 1987, c. 136, s. 3; 1991, c. 459, s. 10; c. 565, ss. 5, 7; 1991 (Reg. Sess., 1992), c. 920, s. 2.)

Effect of Amendments. — Session Laws 1991, c. 459, s. 10, effective July 1, 1991, in subsection (d), substituted "375" for "750."

Session Laws 1991, c. 565, ss. 5 and 7, effective October 1, 1991, added subsection (d1).

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, substituted "the permittees" for "his" in subsection (a), in subsection (d) substituted "355 milliliter" for "375 milliliter" in the first sentence, and added the second sentence, and repealed subsection (d1), which pertained to the size of bottles.

ARTICLE 5.

Law Enforcement.

§ 18B-501. Local ABC officers.

(a) Appointment. — Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. The local board may designate one officer as the chief ABC officer for that board.

(b) Subject Matter Jurisdiction. — After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).

(c) Territorial Jurisdiction. — A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402(d).

(d) Assisting Other Local Agencies. — The local ABC officers employed by a local board shall constitute a "law-enforcement agency" for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law-enforcement agencies under that section.

(e) Assisting State and Federal Enforcement. — A local ABC officer may assist State and federal law-enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

(1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;

(2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;

(3) The local ABC officer is supervised by someone in the requesting agency; and

(4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) Contracts with Other Agencies. — Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement.

(g) Discharge. — Local ABC officers are subject to the discharge provisions of G.S. 18B-202. (1949, c. 1251, s. 4; 1961, c. 645; 1963, c. 426, s. 2; 1967, c. 868; 1971, c. 872, s. 1; 1973, c. 29; 1977, c. 908; 1981, c. 412, s. 2; 1993, c. 193, s. 2.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1993 amendment, effective June 22, 1993, in subsection (f), added the fourth sentence.

CASE NOTES

Cited in State v. Hair, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

§ 18B-502. Inspection of licensed premises.

(a) Authority. — To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises.

(b) **(Effective October 1, 1994 — See editor's note)** Interference with Inspection. — Refusal by a permittee or by any employee of a permittee to permit officers to enter the premises to make an inspection authorized by subsection (a) shall be cause for revocation, suspension or other action against the permit of the permittee as provided in G.S. 18B-104. It shall be a Class 2 misdemeanor for any person to resist or obstruct an officer attempting to make a lawful inspection under this section. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17; 1981, c. 412, s. 2; 1993, c. 539, s. 313; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (b) substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine of up to five hundred dollars ($500.00), imprisonment for up to six months, or both".

CASE NOTES

Scope of Waiver as to Searches. — Although defendant, as holder of an ABC permit, waived his Fourth Amendment rights as to searches and seizures by officers incident to enforcement of ABC regulations, this waiver did not extend to a warrantless search of items unconnected with the ABC regulatory scheme, such as closed film canisters. State v. Sapatch, 108 N.C. App. 321, 423 S.E.2d 510 (1992).

OPINIONS OF ATTORNEY GENERAL

An agent may utilize a narcotics detection dog from another agency during a routine inspection. See opinion of Attorney General to Chief George L. Sweat, — N.C.A.G. — (July 19, 1994).

Officer may use force to gain entry into property to conduct an inspection if the business manager denies entry. See opinion of Attorney General to Chief George L. Sweat, — N.C.A.G. — (July 19, 1994).

§ 18B-503. Disposition of seized alcoholic beverages.

(a) Storage. — A law-enforcement officer who seizes alcoholic beverages as evidence of an ABC law violation shall provide for the storage of those alcoholic beverages until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) Disposition Before Trial. — After giving notice to each defendant, to any other known owner, and to the Commission, a judge may order any of the following dispositions of alcoholic beverages seized as evidence of an ABC law violation:

(1) The destruction of any malt beverages except that amount needed for evidence at trial.

(2) The sale of any alcoholic beverages other than malt beverages or nontaxpaid alcoholic beverages, and other than any alcoholic beverages needed for evidence at trial, if the trial is likely to be delayed for more than 90 days, or if the quantity or nature of the alcoholic beverages is such that storage is impractical or unduly expensive.

(3) The destruction of the alcoholic beverages if storage or sale is not practical.

(4) Continued storage of the alcoholic beverages.

(c) Disposition After Trial. — After the criminal charge is resolved, a judge may order the following dispositions of seized alcoholic beverages:

(1) If the owner or possessor of the alcoholic beverages is found guilty of a criminal charge relating to those alcoholic bev-

erages, the judge may order the sale or destruction of any alcoholic beverages that were held until trial.

(2) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the alcoholic beverages returned to that owner or possessor, except as provided in subdivision (3).

(3) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are otherwise resolved in favor of the owner or possessor, but possession of the alcoholic beverages by that owner or possessor would be unlawful, the judge shall order the alcoholic beverages either sold or destroyed.

(4) If ownership of the alcoholic beverages remains uncertain after trial or after the charges have been dismissed, the judge may order the alcoholic beverages held, or the alcoholic beverages sold and the proceeds held, for a specified time, until ownership of the alcoholic beverages can be determined.

(d) Holding for Administrative Hearings. — If alcoholic beverages used as evidence in a criminal proceeding are also needed as evidence at an administrative hearing, a judge shall not order any of the dispositions set out in subsection (c), but shall order the alcoholic beverages held for the administrative hearing and for a determination of final disposition by the Commission. The Commission may, before or after an administrative hearing, order any of the dispositions authorized under subsections (b) and (c). If no related criminal proceeding has commenced, the Commission shall not order sale or destruction of alcoholic beverages until notice has been given to the district attorney for the district where the alcoholic beverages were seized or any violation of ABC laws related to the seizure of the alcoholic beverages is likely to be prosecuted.

(e) Sale Procedure. — The sale of unfortified wine or fortified wine shall be by public auction unless those wines would likely become spoiled or lose value in the time required to arrange a public auction. If spoilage or loss of value is likely, the judge ordering the sale or the Commission may authorize sale at the prevailing wholesale price, as determined by the Commission, to one or more persons holding the appropriate retail wine permits in the county in which the wine was seized, or in a neighboring county if there are no such persons in the county in which the wine was seized. Spirituous liquor may be sold only to the local ABC board serving the city or county in which the liquor was seized, or, if there is no local board for that city or county, to the nearest local board. The sale price shall be at least ten percent (10%) less than the price the local board would pay for the same liquor bought through the State warehouse.

(f) Sale Proceeds. — An agency selling alcoholic beverages seized under the provisions of this Chapter shall keep the proceeds in a separate account until some other disposition is ordered by a judge or the Commission. In a criminal proceeding, if the owner or possessor of the alcoholic beverages is found guilty of a violation relating to seizure of the alcoholic beverages, if the owner or possessor is found not guilty or the charge is dismissed or otherwise resolved in favor of the owner or possessor, but the possession of the alcoholic beverages by that owner or possessor would be unlawful, or if the ownership of the alcoholic beverages cannot be determined, the proceeds from the sale of those alcoholic beverages shall be paid to the school fund of the county in which the alcoholic beverages were seized. If the owner or possessor of alcoholic beverages seized for violation of the ABC laws is found not guilty of criminal charges relating to the seizure of those beverages or the charge is dismissed or otherwise resolved in favor of the owner or possessor, and if possession of the alcoholic beverages by that owner or possessor was lawful when the beverages were seized, the proceeds from the sale of those alcoholic beverages shall be paid to the owner or possessor. The agency making the sale may deduct and retain from the amount to be placed in the county school fund the costs of storing the seized alcoholic beverages and of conducting the sale, but may not deduct those costs from the amount to be turned over to an owner or possessor of the alcoholic beverages.

(g) Court Action by Owner. — Any person who claims any of the following resulting from the seizure of alcoholic beverages may bring an action in the superior court of the county in which the alcoholic beverages were seized:

(1) To be the owner of alcoholic beverages that are wrongfully held.

(2) To be the owner of alcoholic beverages that are needed as evidence in another proceeding.

(3) To be entitled to proceeds from a sale of seized alcoholic beverages.

(4) To be entitled to restitution for alcoholic beverages wrongfully destroyed. (1923, c. 1, s. 12; C.S., s. 3411(l); 1939, c. 12; 1941, c. 310; 1957, c. 1235, s. 3; 1971, c. 872, s. 1; 1981, c. 412, s. 2; 1993, c. 415, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, in subsection (b) substituted "order any of" for "make"; substituted "The" for "He shall order the" in subdivision (b)(1); deleted "He may order the" in subdivisions (b)(1) and (b)(2); substituted "The" for "He may order" in subdivision (b)(3); substituted "Continued" for "He may order continued" in subdivision (b)(4); substituted "favor of the owner or possessor" for "his favor" in subdivisions (c)(2) and (c)(3); substituted "that owner or possessor" for "him" in subdivision (c)(3); in subsection (d) substituted "Commission. The" for "Commission or one of its hearing officers. A hearing officer for the" and deleted "or its hearing officers" following "proceeding has commenced, the Commission"; in subsection (e) deleted "or hearing officer" following "is likely, the judge" and inserted "or the Commission" following "ordering the sale"; in subsection (f) substituted "the Commission. In" for "a Commission hearing officer. If, in", inserted "if" following "a criminal proceeding", deleted "or" following "seizure of the alcoholic beverages", substituted "the owner or possessor" for "he", substituted "guilty or" for "guilty, or if" preceding "the charge is dismissed", twice substituted "favor of the owner or possessor" for "his favor", twice substituted "that owner or possessor" for "him" following "alcoholic beverages by", substituted "beverages or" for "beverages, or if" following "seizure of those", substituted "the owner or possessor" for "him" following "beverages shall be paid to"; in subsection (g) substituted "claims" for "has" following "Any person who", deleted "claims" following "any of the following"; and rewrote subdivisions (g)(1), (g)(2), (g)(3), and (g)(4).

§ 18B-504. Forfeiture.

(a) Property Subject to Forfeiture. — The following kinds of property shall be subject to forfeiture:

(1) Motor vehicles, boats, airplanes, and all other conveyances used to transport nontaxpaid alcoholic beverages in violation of the ABC laws;

(2) Containers for alcoholic beverages which are manufactured, possessed, sold, or transported in violation of the ABC laws; and

(3) Equipment or ingredients used in the manufacture of alcoholic beverages in violation of the ABC laws.

(b) Exemption for Forfeiture. — Property which may be possessed lawfully shall not be subject to forfeiture when it was used unlawfully by someone other than the owner of the property and the owner did not consent to the unlawful use.

(c) Seizure of Property. — If property subject to forfeiture has not already been seized as part of an arrest or search, a law-enforcement officer may apply to a judge for an order authorizing seizure of that property. An order for seizure may be issued only after criminal process has been issued for an ABC law violation in connection with that property. The order shall describe the property to be seized and shall state the facts establishing probable cause to believe that the property is subject to forfeiture.

(d) Custody until Trial. — A law-enforcement officer seizing property subject to forfeiture shall provide for its safe storage until trial. The officer may destroy stills and perishable materials seized under subdivision (a)(3), if storage is impractical and if the absence of the property will not be likely to adversely affect the defendant's right to defend against the charge that is the basis for the forfeiture. If the officer having custody of the property is satisfied that it will be returned at the time of trial, he may return the property to the owner upon receiving a bond for the value of the property, signed by sufficient sureties. If the property is not returned at the time of trial, the full amount of the bond shall be forfeited to the court. Property which it is unlawful to possess may not be returned to the owner.

(e) Disposition after Trial. — The presiding judge in a criminal proceeding for violation of ABC laws may take the following actions after resolution of a charge against the owner or possessor of property subject to forfeiture under this section:

(1) If the owner or possessor of the property is found guilty of an ABC offense, the judge may order the property forfeited.

(2) If the owner or possessor of the property is found not guilty, or if the charge is dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the property returned to the owner or possessor.

(3) If ownership of the property remains uncertain after trial, the judge may order the property held for a specified time to determine ownership. If the judge finds that ownership cannot be determined with reasonable effort, the judge shall order the property forfeited.

(4) Regardless of the disposition of the charge, if the property is something that may not be possessed lawfully, the judge shall order it forfeited.

(5) If the property is also needed as evidence at an administrative hearing, the judge shall provide that the order does not go into effect until the Commission determines that the property is no longer needed for the administrative proceeding.

(f) Disposition of Forfeited Property. — A judge ordering forfeiture of property may order any one of the following dispositions:

(1) Sale at public auction;

(2) Sale at auction after notice to certain named individuals or groups, if only a limited number of people would have use for that property;

(3) Delivery to a named State or local law-enforcement agency, if the property is not suited for sale, with preference to be given in the following order, to: the agency that seized the property, the ALE Division, the Commission, the local board of the jurisdiction in which the property was seized, and the Department of Justice; or

(4) Destruction, if possession of the property would be unlawful and it could not be used or is not wanted for law enforcement, or if sale or other disposition is not practical.

(g) Proceeds of Sale. — If forfeited property is sold, the proceeds of that sale shall be paid to the school fund of the county in which the property was seized, except as provided in subsection (h). Before placing the proceeds in the school fund the agency making the sale may deduct and retain the costs of storing the property and conducting the sale.

(h) Innocent Parties. — At any time before forfeiture is ordered, an owner of seized property or a holder of a security interest in seized property, other than the defendant, may apply to protect his interest in the property. The application may be made to any judge who has jurisdiction to try the offense with which the property is associated. If the judge finds that the property owner or holder of a security interest did not consent to the unlawful use of the property, and that the property may be possessed lawfully by the owner or holder, the judge may order:

(1) That the property be returned to the owner, if it is not needed as evidence at trial;

(2) That the property be returned to the owner following trial or other resolution of the case; or

(3) That, if the property is sold following trial, a specified sum be paid from the proceeds of that sale to the holder of the security interest.

(i) Defendant Unavailable. — When property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture under this section by an action in rem against the property. If the owner is known and has been charged with an offense, but is unavailable for trial, the district attorney may seek forfeiture either by an action in rem against the property or by motion in the criminal action.

(j) When No Charge is Made. — Any owner of property seized for forfeiture may apply to a judge to have the property returned to him if no criminal charge has been made in connection with that property within a reasonable time after seizure. The judge may not order the return of the property if possession by the owner would be unlawful. (1923, c. 1, s. 6; C.S., s. 3411(f); 1927, c. 18; 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1; 1969, c. 789; 1971, c.

872, s. 1; 1977, c. 854, s. 2; 1981, c. 412, s. 2; c. 747, s. 48; 1993, c. 415, s. 6.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, substituted "favor of the owner or possessor" for "his favor" in subdivision (e)(2); substituted "the judge" for "he" following "with reasonable effort" in subdivision (e)(3); and substituted "the" for "his" following "judge shall provide that" and deleted "or one of its hearing officers" following "effect until the Commission" in subdivision (e)(5).

CASE NOTES

I. In General.

I. IN GENERAL.

Legislative Intent. — The plain language of this section indicates the legislature intended judges alone should pass on whether a claimant to an interest in seized property is entitled to relief. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

No Right to Jury. — Alcohol-related forfeitures are now controlled by § 18B-504, which contains no provision explicitly granting a jury trial. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

This Section Compared with § 90-112.1. — A comparison of § 90-112.1, enacted in 1975, and this section discloses that application of the provisions of this section to drug-related forfeitures is limited in scope, inasmuch as certain provisions in the two statutes cover the same substantive question. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

While reference to this section, pursuant to § 90-112(f), is still necessary in drug-related forfeiture proceedings to determine (i) when forfeiture occurs as to certain drug-related property subject to forfeiture and (ii) when an innocent person must apply for remission of forfeiture, the elements of proof under § 90-112.1(b) are different from those specified in subsection (h) of this section for alcohol-related forfeiture. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

History of Forfeiture Laws — Alcohol Control. — For a case discussing the history of legislation providing for forfeiture of conveyances used to violate alcohol control laws and the relation of such laws to drug forfeiture statutes, see State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

ARTICLE 6.

Elections.

§ 18B-600. Places eligible to hold alcoholic beverage elections.

(a) Kinds of Elections. — The following kinds of alcoholic beverage elections shall be permitted:

(1) Malt beverage;
(2) Unfortified wine;
(3) ABC store; and
(4) Mixed beverage.

(b) County Elections. — Any county may hold a malt beverage, unfortified wine, or ABC store election. A county may hold a mixed beverage election only if the county already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election.

(c) City Malt Beverage and Unfortified Wine Elections. — A city may hold a malt beverage or unfortified wine election only if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and:

(1) The city has a population of 500 or more; or
(2) The city operates an ABC store.

(d) City ABC Store Elections. — A city may hold an ABC store election only if:

(1) The city has at least 500 registered voters; and
(2) The county in which the city is located does not operate ABC stores.

(e) City Mixed Beverage Elections. — A city may hold a mixed beverage election only if:

(1) The city has at least 500 registered voters; and
(2) Either:
   a. The city already operates a city ABC store; or
   b. A city ABC store election is to be held at the same time as the mixed beverage election; or
   c. The city does not operate a city ABC store but:
      1. The county operates an ABC store;
      2. The county has already held a mixed beverage election; and
      3. The vote in the last county election was against the sale of mixed beverages.

(e1) Small City Mixed Beverage Elections. — A city may also hold a mixed beverage election if the city has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the smaller city may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

This subsection shall not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford, and Wilkes Counties.

(e2) Ski Resorts ABC Elections. — Notwithstanding any other provisions of this section, any city that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from December 1 through March 15, may hold an election authorized by subdivision (a)(1), (2), or (4) of this section. If the sale of mixed beverages is approved, purchase-transportation permits shall be issued and the sales of liquor shall be made by any local board designated by the State ABC Commission.

(e3) Small Town Mixed Beverage Elections. — A town may hold a mixed beverage election if the town has at least 200 registered voters and is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages. Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(e4) Multicounty/City ABC Elections. — If a city is located in two or more counties, the following provisions shall apply:

(1) The city may hold a malt beverage or unfortified wine election if any county in which a portion of the city is located has already held such an election, the vote in the last election of the particular type was against the sale of that type of alcoholic beverage, and the city has a population of 500 or more.

(2) The city may hold a mixed beverage election if the city has at least 500 registered voters and a county in which a portion of the city is located operates ABC stores.

(3) If an election is held by a city under this subsection, all of the city voters may vote in the election. If the vote is for approval, alcoholic beverages may be sold on the basis of that approval and under the provisions of this Chapter. If the sale of mixed beverages is approved, the mixed beverage permittees shall purchase their liquor from one or more ABC stores located within the city that have been designated by the local boards for those purchases. The remaining gross receipts shall be distributed in accordance with existing law applicable to those ABC stores, except that after the applicable distributions have been made pursuant to G.S. 18B-805(b), (c), and (d), the local share of the mixed beverages surcharge and the guest room cabinet surcharge required by G.S. 18B-804(b)(8) and (9) shall be distributed one-half to the general fund of the city where the mixed beverage permittees are located and one-half to the local ABC boards from whose stores liquor is purchased.

(f) Township Elections. — In a county where ABC stores have heretofore been established by petition pursuant to law, an election may be called in any township on any of the propositions listed in G.S. 18B-602. The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(g) Beautification District Elections. — In a county where ABC stores have been approved by an election and a beautification district has been created after May, 1984, and prior to June 30, 1990, an election authorized by subsection (a) of this section may be called in the beautification district. The election shall be called in accordance with G.S. 18B-601(b), conducted, and the results determined in the same manner as county elections held under this Article. For purposes of this Article, beautification districts holding any election shall be treated on the same basis as counties, and municipalities located within those beautification districts shall be treated on the same basis as cities. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; c. 747, s. 49; 1983, c. 113, s. 1; 1983, c. 457, s. 2; 1985 (Reg. Sess., 1986), c. 919, s. 1; 1987, c. 766; 1989, c. 77; c. 400, s. 6; 1991 (Reg. Sess., 1992), c. 976, s. 1; 1993, c. 193, s. 1.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 17, 1992, added subsection (e3).

The 1993 amendment, effective June 22, 1993, added subsection (e4).

§ 18B-601. Election procedure.

(a) Generally. — Except as otherwise provided in this section, an alcoholic beverage election shall be conducted in the same manner and under the same rules as a referendum under Chapter 163.

(b) How County Election Called. — A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

(1) A written request for an election from the governing body of the county; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called. — A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

(1) A written request for an election from the city governing body; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated.

(d) Form of Request. — A request or petition for a malt beverage election shall state which of the four propositions in G.S. 18B-602(a) are to be voted upon. A request or petition for an unfortified wine election shall state which of the three propositions in G.S. 18B-602(d) are to be voted upon. More than one kind of alcoholic beverage election may be included in a single request or petition.

(e) Petitions. — A petition for an election shall be on a form provided by the appropriate local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition shall be considered initiated at the time the form is delivered by the board of elections to the person who requests it. Within 72 hours after the petition is initiated, the board of elections shall certify the number of registered voters in the city or county at the time it was initiated. The petition shall be returned to the board of elections within 90 days of the time it is initiated. Failure to return the petition within that time shall render it void. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(f) Election Date. — The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board. No alcoholic beverage election may be held on the Tuesday next after the first Monday in November of an even-numbered year.

(g) Registration. — No separate registration shall be required to vote in an alcoholic beverage election. Registration shall be closed for an alcoholic beverage election in the same manner and under the same schedule as for any other election.

(h) Notice. — The board of elections shall give notice of an alcoholic beverage election and notice of the close of registration in the same manner and under the same schedule as for any other election.

(i) Observers. — The proponents and opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two observers to attend each voting place. The persons authorized to appoint observers shall, three days before the election, submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. The persons appointed as observers shall be registered voters of the precinct for which appointed. The chief judge and judges for the precinct may for good cause reject any appointee and require that another be appointed. Observers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. Observers shall be permitted in the voting place to make such observation and to take such notes as they may desire. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1985, c. 705, ss. 1, 2.1; 1987, c. 14; 1993 (Reg. Sess., 1994), c. 762, s. 8.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "observers" for "watchers" throughout subsection (i), and substituted "chief judge" for "registrar" in the second and fourth sentences of that subsection.

§ 18B-603. Effect of alcoholic beverage elections on issuance of permits.

(a) Malt Beverage Elections. — If a malt beverage election is held under G.S. 18B-602(a) and the sale of malt beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises malt beverage permits.

(2) If off-premises sales are approved, the Commission may issue off-premises malt beverage permits.
(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises malt beverage permits.
(4) If the kinds of sales described in G.S. 18B-602(a)(4) are approved, the Commission may issue on-premises malt beverage permits to restaurants and hotels only and off-premises malt beverage permits to other permittees.

(b) Unfortified Wine Elections. — If an unfortified wine election is held under G.S. 18B-602(d) and the sale of unfortified wine is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises unfortified wine permits.
(2) If off-premises sales are approved, the Commission may issue off-premises unfortified wine permits.
(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises unfortified wine permits.

(c) ABC Store Elections. — If an ABC store election is held under G.S. 18B-602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

(1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.
(2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act, except that neither on-premises nor off-premises unfortified wine permits may be issued in a jurisdiction if:
    a. The jurisdiction approved ABC stores before January 1, 1982;
    b. The jurisdiction held an unfortified wine election before January 1, 1982; and
    c. In that unfortified wine election, the jurisdiction did not approve either on-premises or off-premises sales of unfortified wine.
(3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved.

(d) Mixed Beverage Elections. — If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.
(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establish-

ments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

(e) Mixed Beverages at Airports. — When the sale of mixed beverages has been approved in a city election, the Commission may also issue permits under subsection (d) for qualified establishments outside the city but within the same county, if:

(1) The establishment is on the property of an airport;
(2) The airport is operated by the city or by an airport authority in which the city participates; and
(3) The airport services planes which board at least 150,000 passengers annually.

(f) Permits Not Dependent on Elections. — The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;
(2) Limited special occasion permits;
(3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
(4) Culinary permits, except as restricted by subdivision (d)(5);
(5) Special one-time permits issued under G.S. 18B-1002;
(6) All permits listed in G.S. 18B-1100;
(7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC establishment.

(f1) Reserved for future codification purposes.

(f2) Permits for Special ABC Areas. — The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area.

(g) Miscellaneous. — The definitions in G.S. 18B-1000 shall apply to this section.

(h) Permits Based on Existing Permits. — In any county in which the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county. The Commission may issue the following permits:

(1) On and Off Premises Malt Beverage;
(2) On and Off Premises Unfortified Wine;
(3) On and Off Premises Fortified Wine; or
(4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to the last paragraph of G.S. 18B-603(d), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted. (1947, c. 1084, s. 3; 1969, c. 647, s. 2; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 589; 1981 (Reg. Sess., 1982), c. 1240; 1983, c. 113, s. 2; 1985, c. 689, s. 7; 1987, c. 136, ss. 5, 6; c. 307, s. 2; c. 443, s. 2; 1989, c. 629, s. 2; 1991 (Reg. Sess., 1992), c. 920, ss. 11, 13; 1993, c. 415, ss. 7-9.)

Effect of Amendments. —

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, in subsection (f2), in the first sentence inserted "G.S. 18B-1001(2)," "G.S. 18B-1001(4)," "G.S. 18B-1001(6)", and substituted "establishments" for "establishments, not open to the public," and in subsection (h) inserted "or in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean" in the first sentence of the first paragraph, added the last two sentences of the last paragraph.

Session Laws 1993, c. 415, effective July 20, 1993, in s. 7 inserted "and congressionally chartered veterans organizations" in subdivision (d)(4); in s. 8 added "and congressionally chartered veterans organizations" in subdivision (f)(3), added subdivision (f)(7), and made related changes; and in s. 9 substituted "Beverages" for "Beverage" in subdivision (h)(4), deleted the first sentence of the second paragraph of subsection (h), deleted "municipal" following "liquor at the nearest" in the second paragraph of subsection (h), substituted "store that is located in the county" for "store that has been designated for such purchases" at the end of the second paragraph of subsection (h), and added the third paragraph of subsection (h).

§ 18B-604. Timing and effect of subsequent elections.

(a) Time Limits. — No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) Effect of Favorable County Vote on City. — If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that city, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city within that county shall not affect the legality of those previously authorized sales in the city.

(c) Effect of Negative County Vote on City. — If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city in which sale is lawful because of a city election or a local act.

(d) Effect of City Election on County. — A city alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city.

(e) ABC Store Required for Mixed Beverages. — The sale of mixed beverages may not continue in a city or county at any time after the ABC stores which are requisite to mixed beverage sales have closed.

(f) When Sales Stop. — When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1993, c. 415, s. 29.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, inserted "or subsequent" following "or any previous" in subsection (b).

ARTICLE 7.

Local ABC Boards.

§ 18B-700. Appointment and organization of local ABC boards.

Local Modification. — Nash: 1991 (Reg. Sess., 1992), c. 863; city of Gastonia: 1991, c. 557, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 18B-701. Powers of local ABC boards.

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

§ 18B-702. Financial operations of local boards.

(a) Generally. — A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Borrowing Money. — A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

(c) Audits. — A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.

(d) Deposits and Investments. — A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

(e) Compliance with Commission Rules. — The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds.

(f) Applicability of Criminal Statutes. — The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon. (1937, c. 49, ss. 10, 12; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902; 1971, c. 872, s. 1; 1973, cc. 85, 185; c. 1000, ss. 1, 2; 1977, c. 618; 1979, c. 467, s. 20; c. 617; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 11; 1991, c. 459, s. 2.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, added subsection (f).

ARTICLE 8.

Operation of ABC Stores.

§ 18B-801. Location, opening, and closing of stores.

Local Modification. — Brunswick: 1991, c. 372; 1991 (Reg. Sess., 1992), c. 776; town of Navassa: 1993, c. 17, s. 1.

§ 18B-804. Alcoholic beverage pricing.

(a) Uniform Price of Spirituous Liquor. — The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) Sale Price of Spirituous Liquor. — The sale of spirituous liquor sold at the uniform State price shall consist of the following components:

(1) The distiller's price.
(2) The freight and bailment charges of the State warehouse as determined by the Commission.
(3) A markup for local boards as determined by the Commission.
(4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).
(5) An additional markup for local boards equal to three and one-half percent ($3\frac{1}{2}\%$) of the sum of subdivisions (1), (2), and (3).

(6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.

(6a) The bailment surcharge.

(6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.

(7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.

(8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities.

(9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities.

(c) Sale Price of Fortified Wine. — The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.

(d) Repealed by Session Laws 1985, c. 59, s. 2. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 5; 1983, c. 713, ss. 100, 101; 1985, c. 59, s. 2; c. 68, s. 1; c. 114, ss. 7-9; 1991, c. 565, ss. 4, 7; c. 689, ss. 304, 305; 1991 (Reg. Sess., 1992), c. 920, s. 3.)

Editor's Note. — Session Laws 1991, c. 689, s. 111 provides: "Funds received by the Department of Human Resources from the tax levied on mixed beverages under G.S. 18B-804(b)(8) shall be expended by the Department of Human Resources as prescribed by G.S. 18B-805(h). These funds shall be matched by local funds in accordance with the State/local ratio established by the current area mental health matching formula. These funds shall be allocated to the area mental health programs for substance abuse services on a per capita basis as determined by the Office of State Budget and Management's most recent estimates of county populations."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. — Session Laws 1991, c. 565, ss. 4 and 7, effective October 1, 1991, added subdivision (b)(9).

Session Laws 1991, c. 689, s. 304, effective August 1, 1991, and applicable to sales made on or after that date, in this section as amended by Session Laws 1991, c. 565, substituted a period for a semicolon at the end of subdivisions (b)(1) through (7); deleted "and" at the end of subdivision (b)(7); and in subdivision (b)(8), substituted "twenty dollars ($20.00)" for "fifteen dollars ($15.00)."

Session Laws 1991, c. 689, s. 305, effective October 1, 1991, and applicable to sales made on or after that date, in subdivision (b)(9), as enacted by Session Laws 1991, c. 565, substituted "twenty dollars ($20.00)" for "fifteen dollars ($15.00)."

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, deleted the former last two sentences in subdivision (b)(9) which read: "This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census."

§ 18B-805. Distribution of revenue.

(a) Gross Receipts. — As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.

(b) Primary Distribution. — Before making any other distribution, a local board shall first pay the following from its gross receipts:

(1) The board shall pay the expenses, including salaries, of operating the local ABC system.

(2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).

(3) Each month the local board shall pay to the Department of Human Resources five percent (5%) of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.

(4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(c) Other Statutory Distributions. — After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:

(1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.

(2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). The local board may contract with the ALE Division to provide the law enforcement required by this subdivision. Notwithstanding the provisions of any local act, this provision shall apply to all local boards.

(3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven

percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.

(d) Working Capital. — After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

(e) Other Distributions. — After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

(f) Surcharge Profit Shared. — When, pursuant to the last paragraph of G.S. 18B-603(d), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

(g) Quarterly Distributions. — When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.

(h) Expenditure of Alcoholism Funds. — Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price. — If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price. (1981, c. 412, s. 2; c. 747, s. 52; 1983, c. 713, ss. 102-104; 1985 (Reg. Sess., 1986), c. 1014, s. 116; 1991, c. 459, s. 3; c. 689, s. 306; 1991 (Reg. Sess., 1992), c. 920, s. 4; 1993, c. 415, s. 27.)

Editor's Note. —

Session Laws 1991, c. 689, s. 111 provides: "Funds received by the Department of Human Resources from the tax levied on mixed beverages under G.S. 18B-804(b)(8) shall be expended by the Department of Human Resources as prescribed by G.S. 18B-805(h). These funds shall be matched by local funds in accordance with the State/local ratio established by the current area mental health matching formula. These funds shall be allocated to the area mental health programs for substance abuse services on a per capita basis as determined by the Office of State Budget and Management's most recent estimates of county populations."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. — Session Laws 1991, c. 459, s. 3, effective July 1, 1991, in subsection (e) deleted "and if the Commission approves" before "those governing bodies may alter" in the second sentence, at the end of the second sentence added "or under any local act", and added the third sentence.

Session Laws 1991, c. 689, s. 306, effective August 1, 1991, and applicable to sales made on or after that date, in subdivision (b)(2) substituted "one-half" for "one third" and in subdivision (b)(3) substituted "five percent (5%)" for "six and two-thirds percent ($6^2/_3$%)."

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, in subsection (b) inserted "both" and added the language beginning "and the guest room" in the second sentence of subdivision (2) and in the first sentence of subdivision (3), and in subsection (f) substituted "Surcharge" for "Mix Beverage" in the catchline, and inserted "both" and "and the guest room cabinet surcharge required by G.S. 18B-804(b)(9)" in the first and second paragraphs.

The 1993 amendment, effective July 20, 1993, added the second sentence in subdivision (c)(2).

CASE NOTES

No Estoppel against Town Council Where It Acted Outside Its Authority. — Where a town's resolution appropriating a certain percentage of its alcoholic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

ARTICLE 9.

Issuance of Permits.

§ 18B-900. Qualifications for permit.

(a) Requirements. — To be eligible to receive and to hold an ABC permit, a person shall:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;

(2) Be a resident of North Carolina unless:

a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;

(4) Not have been convicted of an alcoholic beverage offense within two years;

(5) Not have been convicted of a misdemeanor controlled substance offense within two years; and

(6) Not have had an alcoholic beverage permit revoked within three years.

(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(b) Definition of Conviction. — A person has been "convicted" for the purposes of subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere, and judgment has been entered against him. A felony conviction in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

(c) Who Must Qualify; Exceptions. — For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

(1) The owner of a sole proprietorship;
(2) Each member of a firm, association or general partnership;
(2a) Each general partner in a limited partnership;
(3) Each officer, director and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;
(4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;
(5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(d) Manager of Off-Premises Establishment. — Although he need not otherwise meet the requirements of this section, the manager of an establishment operated by a corporation and holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at least 19 years old and shall meet the requirements of subdivisions (3), (4), (5) and (6) of subsection (a).

(e) Convention Centers. — With the approval of the Commission, the manager of a convention center may contract with another person to provide food and beverages at conventions and banquets at the convention center, and that person may engage in the activities authorized by the convention center's permit, under conditions set by the Commission. The person with whom the convention center contracts must meet the qualifications of this section. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 53, 54; 1981 (Reg. Sess., 1982), c. 1262, ss. 13, 14; 1983, c. 435, ss. 32, 39; 1987, c. 136, ss. 7, 8; 1993, c. 415, s. 10.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, in subdivision (c)(3), deleted "more than" following "director and owner of" and inserted "or more" preceding "of the stock".

§ 18B-901. Issuance of permits.

(a) Who Issues. — All ABC permits shall be issued by the Commission. Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.

(b) Notice to Local Government. — Before issuing a retail ABC permit, other than a:

(1) Special occasion permit under G.S. 18B-1001(8);
(2) Limited special occasion permit under G.S. 18B-1001(9);
(3) Temporary permit under G.S. 18B-905; or
(4) Special one-time permit under G.S. 18B-1002

for an establishment, the Commission shall give notice of the permit application to the governing body of the city in which the establishment is located. If the establishment is not inside a city, the Commission shall give notice to the governing body of the county.

The Commission shall allow the local governing body 15 days from the time the notice was mailed or delivered to file written objection to the issuance of the permit. To be considered by the Commission, the objection shall state the facts upon which it is based.

(c) Factors in Issuing Permit. — Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which he has applied. To be a suitable place, the establishment shall comply with all applicable building and fire codes. Other factors the Commission shall consider in determining whether the applicant and the business location are suitable are:

(1) The reputation, character, and criminal record of the applicant;
(2) The number of places already holding ABC permits within the neighborhood;
(3) Parking facilities and traffic conditions in the neighborhood;
(4) Kinds of businesses already in the neighborhood;
(5) Whether the establishment is located within 50 feet of a church or public school or church school;
(6) Zoning laws;
(7) The recommendations of the local governing body; and
(8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of his business at that location would be detrimental to the neighborhood.

(d) Commission's Authority. — The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1993 (Reg. Sess., 1994), c. 749, ss. 1, 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, and only applicable to permits applied for on or after July 15, 1994, in subsection (b), in the introductory language substituted "a retail" for "an," added "other than a" at the end, added subdivisions (b)(1) through (b)(4), and in the next to last sentence substituted "15 days" for "10 days"; and in the third sentence of the introductory language of subsection (c) substituted "shall" for "may."

§ 18B-902. Application for permit; fees.

(a) Form. — An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. — Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. — Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. — An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit — $200.00.
(2) Off-premises malt beverage permit — $200.00.
(3) On-premises unfortified wine permit — $200.00.
(4) Off-premises unfortified wine permit — $200.00.
(5) On-premises fortified wine permit — $200.00.
(6) Off-premises fortified wine permit — $200.00.
(7) Brown-bagging permit — $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit — $200.00.
(9) Limited special occasion permit — $25.00.
(10) Mixed beverages permit — $750.00.
(11) Culinary permit — $100.00.
(12) Unfortified winery permit — $150.00.
(13) Fortified winery permit — $150.00.
(14) Limited winery permit — $150.00.
(15) Brewery permit — $150.00.
(16) Distillery permit — $150.00.
(17) Fuel alcohol permit — $50.00.
(18) Wine importer permit — $150.00.
(19) Wine wholesaler permit — $150.00.
(20) Malt beverage importer permit — $150.00.
(21) Malt beverage wholesaler permit — $150.00.
(22) Bottler permit — $150.00.
(23) Salesman permit — $25.00.
(24) Vendor representative permit — $25.00.
(25) Nonresident malt beverage vendor permit — $50.00.
(26) Nonresident wine vendor permit — $50.00.
(27) Any special one-time permit under G.S. 18B-1002 — $25.00.
(28) Winery special event permit — $100.00.
(29) Mixed beverages catering permit — $100.00.
(30) Guest room cabinet permit — $750.00.

(e) Fee for Combined Applications. — If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid. If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00).

(f) Fee Not Refundable. — The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. — All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 55, 56; 1983, c. 713, s. 105; 1989, c. 737, s. 3; c. 800, s. 7; 1991, c. 267, s. 2; c. 565, ss. 2, 7; c. 669, s. 2; c. 689, ss. 307, 308; 1991 (Reg. Sess., 1992), c. 920, s. 5; 1993, c. 415, s. 11; 1993 (Reg. Sess., 1994), c. 745, s. 28.)

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. —

Session Laws 1991, c. 267, s. 2, effective June 12, 1991, in subdivision (d)(28) substituted "event" for "show."

Session Laws 1991, c. 565, ss. 2 and 7, effective October 1, 1991, added subdivision (30).

Session Laws 1991, c. 669, s. 2, effective July 13, 1991, added subdivision (d)(29).

Session Laws 1991, c. 689, s. 307, effective May 1, 1992, and applicable to permits and licenses issued or renewed on or after that date, in subdivision (d), as amended by Session Laws 1991, cc. 267 and 565, in subdivisions (d)(1) through (d)(6), substituted "$200.00" for "$100.00."

Session Laws 1991, c. 689, s. 308, effective May 1, 1992, and applicable to permits and licenses issued or renewed on or after that date, in the first sentences of subsection (e) substituted "two hundred dollars ($200.00)" for "one hundred dollars ($100.00)."

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, deleted "This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census" following "$750.00" in subdivision (d)(30).

The 1993 amendment, effective September 1, 1993, and applicable to applications for ABC permits filed on or after that date, in subsection (d) substituted "$150.00" for "$100.00" in subdivisions (12), (13), (14), (15), (16), (18), (19), (20), (21) and (22); substituted "$50.00" for "$25.00" in subdivisions (25) and (26); substituted "$50.00" for "$10.00" in subdivision (17); and in subsection (e) inserted "fifty" following "one hundred" and substituted "($150.00)" for "($100.00)" throughout the subsection.

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in the last sentence of subsection (e) substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)."

§ 18B-903. Duration of permit; renewal and transfer.

(a) Duration. — Once issued, ABC permits shall be valid for the following periods, unless earlier surrendered, suspended or revoked:

(1) On-premises and off-premises malt beverage, unfortified wine, and fortified wine permits; culinary permits; and all permits listed in G.S. 18B-1100 shall remain valid indefinitely;

(2) Limited special occasion permits shall be valid for 48 hours before and after the occasion for which the permit was issued;

(3) Special one-time permits issued under G.S. 18B-1002 shall be valid for the period stated on the permit;

(4) Temporary permits issued under G.S. 18B-905 shall be valid for 90 days; and

(5) All other ABC permits shall be valid for one year, from May 1 to April 30.

(b) Renewal. — Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be five hundred dollars ($500.00). A renewal fee shall not be refundable.

(c) Change in Ownership. — All permits for an establishment shall automatically expire and shall be surrendered to the Commission if:

(1) Ownership of the establishment changes; or

(2) There is a change in the membership of the firm, association or partnership owning the establishment, involving the acquisition of a twenty-five percent (25%) or greater share in the firm, association or partnership by someone who did not previously own a twenty-five percent (25%) or greater share; or

(3) Twenty-five percent (25%) or more of the stock of the corporate permittee owning the establishment is acquired by someone who did not previously own twenty-five percent (25%) or more of the stock.

(d) Change in Management. — A corporation holding a permit for an establishment for which the manager is required to qualify as an applicant under G.S. 18B-900(c) shall, within 30 days after employing a new manager, submit to the Commission an application for substitution of a manager. The application shall be signed by the new manager, shall be on a form provided by the Commission, and shall be accompanied by a fee of ten dollars ($10.00). The fee shall not be refundable.

(e) Transfer. — An ABC permit may not be transferred from one person to another or from one location to another.

(f) Lost Permits. — The Commission may issue duplicate ABC permits for an establishment when the existing valid permits have been lost or damaged. The request for duplicate permits shall be on a form provided by the Commission, certified by the permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten dollars ($10.00).

(g) Name Change. — The Commission may issue new permits to a permittee upon application and payment of a fee of ten dollars ($10.00) for each location when the permittee's name or name of the business is changed. (1971, c. 872, s. 1; 1975, c. 330, s. 1; c. 411, s. 4; 1981, c. 412, s. 2; c. 747, s. 57; 1983, c. 713, s. 106; 1989, c. 800, s. 8; 1991, c. 565, ss. 3, 7; 1991 (Reg. Sess., 1992), c. 920, s. 6.)

Effect of Amendments. —

Session Laws 1991, c. 565, ss. 3 and 7, effective October 1, 1991, added subsection (b1) of this section.

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, substituted "each mixed beverages permit and each guest room cabinet permit" for "a mixed beverages permit" in the second sentence of subsection (b), and repealed subsection (b1) pertaining to renewal of an ABC permit.

§ 18B-904. Miscellaneous provisions concerning permits.

(a) Who Receives Permit. — An ABC permit shall authorize the permitted activity only on the premises of the establishment named in the permit. An ABC permit shall be issued to the owner of the business conducted on the premises, or to the management company employed to independently manage and operate the business. The ABC Commission may determine if a management agreement delegates sufficient managerial control and independence to a manager or management company to require an ABC permit to be issued to the manager.

(b) Posting Permit. — Each ABC permit that is held by an establishment shall be posted in a prominent place on the premises.

(c) Business Not Operating. — An ABC permit shall automatically expire and shall be surrendered to the Commission if the person to whom it is issued does not commence the activity authorized by the permit within six months of the date the permit is effective. Before the expiration of the six-month period, the Commission may waive this provision in individual cases for good cause.

(d) Notice of Issuance. — Upon issuing a permit the Commission shall send notice of the issuance, with the name and address of the permittee and the establishment, to:

(1) The Department of Revenue;
(2) The local board, if one exists, for the city or county in which the establishment is located;
(3) The governing body, sheriff, and tax collector of the county in which the establishment is located;
(4) If the establishment is located inside a city, the governing body, chief of police, and tax collector for the city; and
(5) The ALE Division.

(e) Business or Location No Longer Suitable. — The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).

(f) Local Government Objections. — The governing body of a city or county may designate an official of the city or county, by name or by position, to make recommendations concerning the suitability of a person or of a location for an ABC permit. The governing body of a city or county shall notify the Commission of an official designated under this subsection. An official designated under this subsection shall be allowed to testify at a contested case hearing in which the suitability of a person or of a location for an ABC permit is an issue without further qualification or authorization. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 747, s. 58; 1989, c. 800, ss. 9, 10; 1991, c. 459, s. 4; 1993, c. 415, s. 12.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, added subsection (f).

The 1993 amendment, effective July 20, 1993, rewrote subsection (f).

§ 18B-906. Applicability of Administrative Procedure Act.

(a) Act Applies. — An ABC permit is a "license" within the meaning of G.S. 150B-2, and a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section.

(b) Exception on Hearing Location. — Hearings on ABC permits shall be held in Ahoskie, Asheville, Bryson City, Charlotte, Elizabeth City, Fayetteville, Franklin, Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh, Statesville, Wilmington, and Winston-Salem. Hearings shall be held within 100 miles, as best can be determined by the Commission, of the county seat of the county in which the licensed business or proposed business is located. The hearing may be held, however, at any place upon agreement of the Commission and all other parties.

(c) Exception on New Evidence. — In making a final decision in a contested case in which an issue is whether to deny an application for an ABC permit because either the applicant or the location for the proposed ABC permit is unsuitable, the Commission may hear evidence of acts that occurred after the date the contested case hearing was held if the evidence is admissible under G.S. 150B-29(a). New evidence heard under this subsection is not grounds for reversal or remand under G.S. 150B-51(a). (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, ss. 8, 14; 1953, c. 1207, ss. 2-4; 1957, cc. 1048, 1440; 1963, c. 426, ss. 4, 5, 10-12; c. 460, s. 1; 1971, c. 872, s. 1; 1975, c. 825, s. 1; 1977, c. 176, s. 9; 1981, c. 412, s. 2; 1987, c. 827, s. 1; 1993, c. 415, s. 13.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, in subsection (a) substituted "150B-2" for "150A-2", "150B" for "150A", "this section" for "subsection (b)", and made other stylistic changes; and added subsection (c).

ARTICLE 10.

Retail Activity.

§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

(1) Community theatre. — An establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting an amateur or professional theatrical events to the public. A permit issued for a community theatre is valid only during regularly scheduled theatrical events sponsored by such nonprofit organization.

(1a) Convention center. — A publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings. Convention centers shall include auditoriums, armories, civic centers, convention centers, and coliseums. A permit issued for a convention center shall be valid only for those parts of the building used for conventions and banquets and only during regularly scheduled conventions and banquets.

(1b) Cooking school. — An establishment substantially engaged in the business of operating a school in which cooking techniques are taught for a fee.

(2) Eating establishment. — An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify under subdivision (6). Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drugstores, which have a lunch counter or other section where food is sold to be eaten on the premises.

(3) Food business. — An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses shall include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and shall also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.

(4) Hotel. — An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person.

(5) Private club. — An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not, however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona fide religious organizations, no organization that discriminates in the selection of its membership on the basis of religion shall be eligible to receive any permit issued under this Chapter.

(5a) Residential private club. — A private club that is located in a privately owned, primarily residential and recreational development.

(6) Restaurant. — An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant

shall also have a kitchen and an inside dining area with seating for at least 36 people.

(7) Retail business. — An establishment engaged in any retail business, regardless of whether food is sold on the premises.

(8) Sports club. — An establishment substantially engaged in the business of providing an 18-hole golf course, a tennis court, or both. The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.

(9) Congressionally chartered veterans organizations. — An establishment that is organized as a federally chartered, nonprofit veterans organization, and is operated solely for patriotic or fraternal purposes. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 15; 1983, c. 583, s. 1; c. 896, s. 5; 1987, c. 307, s. 1; c. 391, s. 1; 1993, c. 415, ss. 14, 15; 1993 (Reg. Sess., 1994), c. 579, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, added subdivision (5a), and in subdivision (8), substituted "an 18-hole golf course, a tennis court, or both" for "athletic facilities", substituted "to" for "for" following "to the general public or", deleted the former third sentence, which read, "Sports clubs shall only include golf courses", and inserted "a" preceding "sports club" in the next-to-last sentence.

The 1993 (Reg. Sess., 1994) amendment, effective June 29, 1994, in subdivision (6) in the second sentence substituted "not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages" for "greater than its gross receipts from alcoholic beverages."

§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises is located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. — An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres.

   The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

(2) Off-Premises Malt Beverage Permit. — An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
  a. Restaurants;
  b. Hotels;
  c. Eating establishments;
  d. Food businesses;
  e. Retail businesses.

(3) On-Premises Unfortified Wine Permit. — An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
  a. Restaurants;
  b. Hotels;
  c. Eating establishments;
  d. Private clubs;
  e. Convention centers;
  f. Cooking schools;
  g. Community theatres[;]
  h. Winery.

(4) Off-Premises Unfortified Wine Permit. — An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for retail businesses. The permit may also be issued for a winery for sale of its own unfortified wine.

(5) On-Premises Fortified Wine Permit. — An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
  a. Restaurants;
  b. Hotels;
  c. Private clubs;
  d. Community theatres[;]
  e. Wineries;
  f. Convention centers.

(6) Off-Premises Fortified Wine Permit. — An off-premises fortified wine permit shall authorize the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine.

(7) Brown-Bagging Permit. — A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alco-

holic beverages on the premises. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theaters;
e. Congressionally-chartered veterans organizations.

(8) Special Occasion Permit. — A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers.

(9) Limited Special Occasion Permit. — A limited special occasion permit authorizes the permittee to bring fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.

(10) Mixed Beverages Permit. — A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Convention centers;
e. Community theatres;
f. Nonprofit and political organizations.

(11) Culinary Permit. — A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:
a. Restaurants;
b. Hotels.
c. Cooking schools.

A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.

(12) Mixed Beverages Catering Permit. — A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event.

(13) Guest Room Cabinet Permit. — A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued for any of the following:

a. A hotel located in a county subject to G.S. 18B-600(f).

b. A hotel located in a county that has a population in excess of 150,000 by the last federal census. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c, 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 16, 17, 22; 1983, c. 457, s. 3; c. 583, ss. 2-5; 1985, c. 89, ss. 1-3; c. 596, s. 1; 1987, c. 391, s. 2; c. 434, s. 1; 1989, c. 800, ss. 11, 12; 1991, c. 459, ss. 5, 6; c. 565, ss. 1, 7; c. 669, s. 1; 1991 (Reg. Sess., 1992), c. 920, s. 7; 1993, c. 508, s. 5.)

Effect of Amendments. —

Session Laws 1991, c. 459, s. 5, effective July 1, 1991, in subdivision (5)e, substituted "Wineries" for "Winery" and added subdivision (5)f.

Session Laws 1991, c. 459, s. 6, effective July 1, 1991, in the introductory language of subdivision (7) substituted "five" for "four" in two places.

Session Laws 1991, c. 565, ss. 1 and 7, effective October 1, 1991, added subdivision (13).

Session Laws 1991, c. 669, s. 1, effective July 13, 1991, added subdivision (12).

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, in subdivision (13) added the introductory language of the second paragraph, added subdivision designations a, and b, substituted "A hotel located in a county" for "This subdivision applies to those counties" in subdivision a, and substituted "A hotel located in a county that has" for "This subdivision also applies to those counties which have" in subdivision b.

The 1993 amendment, effective July 1, 1993, in subdivision (7), substituted "eight liters" for "five liters" twice.

§ 18B-1004. Hours for sale and consumption.

(a) Hours. — Except as otherwise provided in this section, it shall be unlawful to sell malt beverages, unfortified wine, fortified wine, or mixed beverages between the hours of 2:00 A.M. and 7:00 A.M., or to consume any of those alcoholic beverages between the hours of 2:30 A.M. and 7:00 A.M., in any place that has been issued a permit under G.S. 18B-1001.

(b) Repealed by Session Laws 1991, c. 689, s. 310, effective August 1, 1991.

(c) Sunday Hours. — It shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 12:00 Noon on that day.

(d) Local Option. — A city may adopt an ordinance prohibiting in the city the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday. A county may adopt an ordinance prohibiting, in the parts of the county outside any city, the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday. Neither a city nor a county, however, may prohibit those sales in establishments having brown-bagging or mixed beverages permits.

(e) This section does not prohibit at any time the wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to G.S. 18B-1001 or G.S. 18B-1002(a)(2) or (5). (1943, c. 339, ss. 1-3; 1949, c. 974, s. 12; 1951, c. 997, s. 1; 1953, c. 675, s. 4; 1963, c. 426, ss. 7-9, 12; 1969, c. 1131; 1971, c. 872, s. 1; 1973, cc. 56, 153; 1979, c. 286, s. 3; 1981, c. 412, s. 2; 1987, c. 35; c. 308; 1991, c. 689, s. 310; 1993, c. 243, ss. 1, 2; c. 415, s. 16.)

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. — The 1991 amendment, effective August 1, 1991, in subsection (a), substituted "2:00 A.M." for "1:00 A.M.," substituted "2:30 A.M." for "1:30 A.M." and substituted "that has been issued" for "which has been issued"; and repealed subsection (b), which dealt with sales and consumption during daylight savings time.

Session Laws 1993, c. 243, ss. 1 and 2, effective June 30, 1993, substituted "12:00 Noon" for "1:00 P.M." in subsection (c), and substituted "12:00 Noon" for "1:00 P.M." twice in subsection (d).

Session Laws 1993, c. 415, s. 16, effective July 20, 1993, substituted "G.S. 18B-1001 or G.S. 18B-1002(a)(2) or (5)" for "G.S. 18B-1001" in subsection (e).

§ 18B-1005. Conduct on licensed premises.

CASE NOTES

Quoted in Hart v. Ivey, 102 N.C. App. 583, 403 S.E.2d 914 (1991).

§ 18B-1006. Miscellaneous provisions on permits.

(a) School and College Campuses. — No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit.

(b) Lockers at Clubs. — A private club or congressionally-chartered veterans organization which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than eight liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined, may be stored by a member at one time.

(c) Wine Sales. — Holders of retail or wholesale permits for the sale of unfortified or fortified wine may buy and sell only wines on the Commission's approved list. The Commission may authorize the importation and purchase of wines not on the approved list by permittees and others. An authorization shall state the kind and amount of wine that may be imported and purchased and the time within which the transaction shall be completed.

(d) Unlawful Possession or Consumption. — It shall be unlawful for a permittee to possess or consume, or allow any other person to possess or consume, on the licensed premises, any fortified wine or spirituous liquor, the possession or consumption of which is not authorized either by the permits issued to him for the premises or by any other provision of the ABC law.

(e) Facsimile Permit. — It shall be unlawful for any person to produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on his licensed premises.

(f) Failure to Surrender Permit. — It shall be unlawful for any person to refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.

(g) Restrictions on Sales at Cooking Schools. — Retail sales of food or alcoholic beverages to be consumed on the premises of a cooking school are restricted to bona fide enrolled students of that school. Violation of this subsection is a ground for administrative action under G.S. 18B-104.

(h) Purchase Restrictions. — A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler who maintains a place of business in this State and has the proper permit.

(i) Tour Boats. — The Commission may issue permits to boats that conduct regularly scheduled tours upon the rivers or waterways of this State under the following conditions:

(1) A boat shall serve meals on each tour and shall have a dining area with seating for at least 36 people;

(2) A boat's gross receipts from food and non-alcoholic beverages shall be greater than its gross receipts from alcoholic beverages;

(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits;

(4) A boat shall have a home port in an area where issuance of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an emergency; and

(5) A boat conducting tours along the intracoastal waterway and navigable waterways that enters into the intracoastal waterway, pursuant to a preannounced itinerary that includes visits to two or more cities, may serve alcoholic beverages pursuant to ABC permits issued according to the jurisdiction of its home port in the following manner:

a. While on tour, alcoholic beverages may be served to passengers;

b. While docked in any other port alcoholic beverages may be served only to tour passengers;

c. During special city-sponsored events and festivals, in which case the boat may open its galley and bars at dockside to the general public and sell those alcoholic beverages that are lawful in the jurisdiction in which it is docked. Any sales in this manner shall be in accordance with the requirements of any ordinances of the jurisdiction in which the boat is docked.

(6) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(j) Recreation Districts. — Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses in a recreation district. A "recreation district" is an area that is located in a county that has not approved the issuance of permits, has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store, and contains a facility of at least 450 acres where five or more public auto racing events are held each year. The recreation district includes the area within a half-mile radius of the racing facility.

(k) Residential Private Club and Sports Club Permits. — The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club that is located in a county that meets the requirements set in any of the following subdivisions:

(1) Has a population of less than 45,000 by the last federal census, has at least three but not more than four cities that have approved the sale of malt beverages or unfortified wine, has only one city that has approved the on-premises sale of malt beverages, and has at least two cities that approved the operation of ABC stores before July 10, 1992.

(2) Borders a county that has called elections pursuant to G.S. 18B-600(f), and:

a. Has not approved the issuance of permits, other than malt beverage permits, in unincorporated areas of the county, and has no more than three cities that approved the operation of ABC stores before July 10, 1992; or

b. Both the county and the two cities within the county have approved the operation of ABC stores.

(3) Is bordered by four counties that have not approved the issuance of permits and have at least one city that has approved the operation of an ABC store.

(4) Has not approved the issuance of permits, has at least three cities that have approved the issuance of only either off-premises malt beverage or both off-premises malt beverage and off-premises unfortified wine permits, and has only one city that, as of July 1, 1993, had approved the operation of an ABC store.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 23; 1985, c. 114, s. 2; c. 301; 1987, c. 515; c. 760; 1989, c. 360; c. 770, s. 49; c. 800, s. 18; 1991, c. 340, s. 1; c. 459, s. 7; 1991 (Reg. Sess., 1992), c. 920, s. 12; 1993, c. 415, ss. 17-19; c. 508, s. 6.)

Effect of Amendments. —

Session Laws 1991, c. 340, s. 1, effective June 19, 1991, inserted "or a nonprofit alumni organization" in subsection (a).

Session Laws 1991, c. 459, s. 7, effective July 1, 1991, in subsection (b), inserted "congressionally-chartered veterans organization" and substituted "five" for "four" in three places.

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, added subsection (k).

Session Laws 1993, c. 508, s. 6, effective July 1, 1993, in the fourth and fifth sentences of subsection (b) substituted "eight liters" for "five liters".

Session Laws 1993, c. 415, effective July 20, 1993, in s. 17 deleted "or importer" following "from a wholesaler" in subsection (h); in s. 18 rewrote subsection (j); and in s. 19 rewrote subsection (k).

§ 18B-1007. Additional requirements for mixed beverages permittees.

(a) Purchases. — A mixed beverages permittee may purchase spirituous liquor for resale as mixed beverages and a guest room cabinet permittee may purchase spirituous liquor for resale from a guest room cabinet only at an ABC store designated by a local board and only with a purchase-transportation permit issued by that local board under G.S. 18B-403 and 18B-404.

(b) Handling Bottles. — It shall be unlawful for a mixed beverages permittee or the permittee's agent or employee to do any of the following:

(1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet.

(2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic beverage.

(3) Transfer from one container to another a mixed beverages tax stamp.

(c) Price List. — Each mixed beverages permittee shall have available for its customers the printed prices of the most common or popular mixed beverages offered for sale by the permittee. Violation of this subsection shall not be a criminal offense, but shall be punishable under G.S. 18B-104.

(d) When a temporary mixed beverages permit has been issued to a new permittee for the continuation of a business at the same location, the permittee going out of business may sell existing mixed beverages inventory to the new permittee, and the Commission may request that the local ABC board restamp the inventory with the mixed beverages tax stamp assigned by the local board to the new mixed beverages permittee. (1981, c. 412, s. 2; c. 746, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 20; 1989, c. 800, s. 15; 1991, c. 565, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 920, s. 8.)

Effect of Amendments. —

Session Laws 1991, c. 565, ss. 6 and 7, effective October 1, 1991, added subdivision (b)(1a).

The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, inserted "and a guest room cabinet permittee may purchase spirituous liquor for resale from a guest room cabinet" in subsection (a), and in subsection (b) substituted "the permittee's" for "his" in the introductory language, added "or from a guest room cabinet" at the end of subdivision (1), and deleted subsection (1a) which read: "Store any other spiritous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet. This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census."

ARTICLE 11.

Commercial Activity.

§ 18B-1104. Authorization of brewery permit.

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt bev-

erage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 310,000 gallons of malt beverages produced by it per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1985, c. 596, s. 2; 1989, c. 800, s. 4; 1991 (Reg. Sess., 1992), c. 920, s. 9; 1993, c. 415, s. 20.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 10, 1992, substituted "applies to a brewery that sells, to consumers at the brewery, to wholesalers, and to exporters, fewer than 310,000 gallons of malt beverages produced by it per year" for "shall apply to breweries that produce fewer than 62,000 gallons of malt beverages per year" in the second sentence of subdivision (7).

The 1993 amendment, effective July 20, 1993, in subdivision (7), inserted the present second sentence, substituted "The" for "this" at the beginning of the present third sentence, and inserted "of this subdivision" and "to retailers" in the present third sentence.

§ 18B-1106. Authorization of wine importer permit.

(a) Authorization. — The holder of a wine importer permit may:

(1) Import fortified and unfortified wines from outside the United States in closed containers;

(2) Store those wines;

(3) Sell those wines to wine wholesalers for purposes of resale.

(b) Distribution Agreements. — Wine distribution agreements are governed by Article 12 of this Chapter. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1983, c. 85, s. 1; 1993, c. 415, s. 21.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, substituted "to wine wholesalers" for "at wholesale" in subdivision (a)(3).

§ 18B-1108. Authorization of malt beverages importer permit.

The holder of a malt beverages importer permit may:

(1) Import malt beverages from outside the United States in closed containers;

(2) Store those malt beverages;

(3) Sell those malt beverages to malt beverage wholesalers for purposes of resale. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c.

182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1993, c. 415, s. 22.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, substituted "to malt beverage wholesalers" for "at wholesale" in subdivision (3).

§ 18B-1109. Authorization of malt beverages wholesaler permit.

(a) Authorization. — The holder of a malt beverages wholesaler permit may:

(1) Receive, possess and transport shipments of malt beverages;

(2) Sell, deliver and ship, in closed containers and in quantities of one case or container or more, malt beverages of any brand filed pursuant to G.S. 18B-1303(a), to wholesalers or retailers licensed under this Chapter, as authorized by the ABC laws;

(3) Furnish and sell malt beverages filed pursuant to G.S. 18B-1303(a) to its employees subject to the rules of the Commission and the Department of Revenue;

(4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to G.S. 18B-1303(a) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the Commission.

(b) Repealed by Session Laws 1989, c. 142, s. 3, effective May 25, 1989. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; c. 747, s. 62; 1989, c. 142, s. 3; 1991, c. 459, s. 8.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, in subdivisions (a)(2), (a)(3) and (a)(4) substituted "G.S. 18B-1303(a)" for "subsection (b)."

§ 18B-1113. Authorization of nonresident malt beverage vendor permit.

The holder of a nonresident malt beverage vendor permit may sell, deliver, and ship malt beverages in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The malt beverages must come to rest at the licensed premises of a malt beverage wholesaler in this State before being resold to a retailer. A nonresident malt beverage vendor permit may be issued to a brewery, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship malt beverages into this State. (1981, c. 747, s. 63; 1993, c. 415, s. 23.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, added the second sentence and made related changes; and in the third sentence inserted "an" preceding "importer" and "a" preceding "bottler".

§ 18B-1114. Authorization of nonresident wine vendor permit.

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. (1981, c. 747, s. 63; 1993, c. 415, s. 24.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, added the second sentence and made related changes; and in the third sentence inserted "a" preceding "wholesaler" and "bottler", and inserted "an" preceding "importer".

§ 18B-1114.1. Authorization of winery special event permit.

(a) Authorization. — The holder of an unfortified winery, or limited winery permit may obtain a winery special event permit. The holder of a winery special event permit may:

(1) Give free tastings of its wine at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(2) Sell its products in closed containers at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(b) Limitation. — A winery special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of unfortified wine. (1989, c. 737, s. 2; 1991, c. 267, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 24; 1993, c. 553, s. 71.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1007, s. 24, and Session Laws 1993, c. 553, s. 71, effective July 24, 1993; amended the first line of Session Laws 1991, c. 267, s. 1, which amended this section, by substituting "18B-1114.1" for "18B-1114.1(a)."

Effect of Amendments. — The 1991 amendment, effective June 12, 1991, rewrote subsection (a) of this section, and in subsection (b) and in the catchline, substituted "event" for "show."

§ 18B-1115. Commercial transportation.

(a) Permit Required. — Unless a person holds a permit which otherwise allows him to transport more than 80 liters of malt beverages other than draft malt beverages in kegs, 20 liters of unfortified wine, or eight liters of fortified wine or spirituous liquor, or is a retailer authorized to transport alcoholic beverages under G.S. 18B-405, each person transporting alcoholic beverages in excess of those quantities shall have the permit described in this section.

(b) When Transportation Legal. — No person may obtain a permit under this section to transport spirituous liquor unless the transportation is for delivery to a federal reservation over which North Carolina has ceded jurisdiction to the United States, for delivery to an ABC store, or for transport through this State to another state.

(c) Common Carriers. — Railroad companies and other common carriers having regularly established schedules of service in this State may transport alcoholic beverages into, out of, and between points in this State without a permit. Those companies shall keep accurate records of the character, volume and number of containers transported and shall allow the Commission and alcohol law-enforcement agents to inspect those records at any time. The Commission may require common carriers to make reports of shipments.

(d) Motor Vehicle Carriers. — Alcoholic beverages may be transported over the public highways of this State by motor vehicle carriers under the following conditions:

(1) The carrier shall notify the Commission of the character of the alcoholic beverages it will transport and of its authorization from the appropriate regulatory authority.

(2) The carrier shall obtain, at no charge, a fleet permit from the Commission authorizing the transportation.

(3) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a copy of the carrier's fleet permit certified by the carrier to be an exact copy of the original.

(4) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a bill of lading, invoice or other memorandum of shipment showing the name and address of the person from whom the alcoholic beverages were received, the character and contents of the shipment, the quantity and volume of the shipment, and the name and address of the person to whom the alcoholic beverages are being shipped.

(5) The driver or person in charge of each vehicle transporting the alcoholic beverages shall display all documents required by this section upon request of any law-enforcement officer. Failure to produce these documents or failure of the documents to disclose clearly and accurately the information required by this section shall be prima facie evidence of a violation of this section.

(6) Each carrier shall keep accurate records of character, volume and number of containers transported and shall allow the Commission and alcohol law-enforcement agents to inspect those records at any time. The Commission may require carriers to make reports of shipments.

(e) Transportation of Spirituous Liquor. — In addition to the requirements of subsection (d), motor vehicle carriers engaged in transporting spirituous liquor shall:

(1) Deposit with the Commission a surety bond for one thousand dollars ($1,000) conditioned that the carrier will not unlawfully transport spirituous liquor into or through this State. The bond, which shall be approved by the Commission, shall be payable to the State of North Carolina. If the bonded carrier is convicted of a violation covered by the bond, the proceeds of the forfeited bond shall be paid to the school fund of the county in which the liquor was seized.

(2) Include in its bill of lading, invoice or other memorandum of shipment the North Carolina code numbers of the spirituous liquor being transported.

(3) Include in its bill of lading, invoice or other memorandum of shipment the route which the vehicle will follow, and the vehicle shall not vary substantially from that stated route.

(f) Malt Beverages and Wine Transported by Boats. — The owner or operator of any boat may transport malt beverages, unfortified wine and fortified wine over the waters of this State if he satisfies all requirements of subsection (d).

(g) State Warehouse Carrier. — The Commission may exempt a carrier for the State or a local board warehouse from any of the requirements of this section provided that it determines that the requirements of this section are otherwise satisfied. (1923, c. 1, s. 15; C.S., s. 3411(o); 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7; 1979, c. 286, s. 5; 1981, c. 412, s. 2; c. 747, s. 63; 1987, c. 136, s. 9; 1989, c. 553, s. 4; 1993, c. 508, s. 7.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in subsection (a) substituted "eight liters" for "five liters".

§ 18B-1116. Exclusive outlets prohibited.

(a) Prohibitions. — It shall be unlawful for any manufacturer, bottler, or wholesaler of any alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or indirectly to:

(1) Require that an alcoholic beverage retailer purchase any alcoholic beverages from that person to the full or partial exclusion of any other alcoholic beverages offered for sale by other persons in this State; or

(2) Have any direct or indirect financial interest in the business of any alcoholic beverage retailer in this State or in the premises where the business of any alcoholic beverage retailer in this State is conducted; or

(3) Lend or give to any alcoholic beverage retailer in this State or his employee or to the owner of the premises where the business of any alcoholic beverage retailer in this State is conducted, any money, service, equipment, furniture, fixtures or any other thing of value.

A brewery qualifying under G.S. 18B-1104(7) to act as a wholesaler or retailer of its own malt beverages is not subject to the provisions of this subsection concerning financial interests in, and lending or giving things of value to, a wholesaler or retailer with respect to the brewery's transactions with the retail business on its premises. The brewery is subject to the provisions of this subsection, however, with respect to its transactions with all other wholesalers and retailers.

(b) Exemptions. — The Commission may grant exemptions from the provisions of this section. In determining whether to grant an exemption, the Commission shall consider the public welfare, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of this section. (1945, c. 708, s. 6; 1953, c. 1207, s. 1; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 747, s. 63; 1993, c. 415, s. 25.)

Effect of Amendments. — The 1993 amendment, effective July 20, 1993, added the final paragraph of subsection (a).

ARTICLE 12.

Wine Distribution Agreements.

§ 18B-1214. Prohibited practices enumerated.

It is a violation of this Article for any winery, directly or indirectly, to engage in any of the following practices:

(1) To restrict the sale of any equity or indebtedness or the transfer of any securities of any wholesaler or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or indebtedness to employees, personnel of the wholesaler, or heirs of the principal owner, as long as basic financial requirements of the winery are complied with and the sale, transfer, or issuance does not have the effect of accomplishing a sale of the wholesaler;

(2) To impose unreasonable standards of performance upon a wholesaler;

(3) To prohibit directly or indirectly the right of free association among wholesalers for any lawful purpose. (1983, c. 85, s. 2.)

Editor's Note. — This section is set out to correct an error in subdivision (3) as it appears in the main volume.

ARTICLE 13.

Beer Franchise Law.

§ 18B-1300. Purpose.

CASE NOTES

Cited in BJT, Inc. v. Molson Breweries USA, Inc., 848 F. Supp. 54 (E.D.N.C. 1994).

§ 18B-1303. Filing of distribution agreement; no discrimination.

(a) Filing. — It is unlawful for a supplier to provide malt beverages to a wholesaler unless a distribution agreement has been filed with the Commission describing the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. No supplier may provide by a distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside his designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted.

(b) No Discrimination. — A wholesaler shall service all retail permit holders within his designated territory without discrimination and shall make a good faith effort to make available to each retail permit holder in the territory each brand of malt beverage which the wholesaler has been authorized to distribute in that area.

(c) No Price Maintenance. — A franchise agreement shall not, either expressly or by implication or in its operation, establish or maintain the resale price of any brand of malt beverages by a wholesaler. (1989, c. 142, s. 1; 1991, c. 459, s. 9; 1993, c. 415, s. 28.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, in subsection (a), inserted "the wholesaler is authorized to sell and the territory in which" near the end of the first sentence, and added the fourth sentence.

The 1993 amendment, effective July 20, 1993, added the language beginning "and shall make" and ending "in that area" in subsection (b).

§ 18B-1306. Remedies for wrongful termination.

CASE NOTES

Stated in BJT, Inc. v. Molson Breweries USA, Inc., 848 F. Supp. 54 (E.D.N.C. 1994).

§ 18B-1307. Transfer of wholesaler's business.

CASE NOTES

A plaintiff must allege both that a defendant acted unreasonably within the meaning of the statute and that the plaintiff (who meets the statutory standards) suffered the damages contemplated by the statute. Allied Distribs., Inc. v. Latrobe Brewing Co., 847 F. Supp. 376 (E.D.N.C. 1993).

Failure to State a Claim. — Where plaintiff pleaded a wrongful refusal to approve a transfer in accordance with subsection (b), there was no allegation that plaintiff suffered the kind of damages specified in subsection (c); therefore, plaintiff failed to state a claim upon which relief may be granted pursuant to this section. Allied Distribs., Inc. v. Latrobe Brewing Co., 847 F. Supp. 376 (E.D.N.C. 1993).

Chapter 19.

Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

Sec.
19-1. What are nuisances under this Chapter.
19-1.1. Definitions.
19-1.2. Types of nuisances.
19-1.3. Personal property as a nuisance; knowledge of nuisance.
19-3. Priority of action; evidence.
19-5. Content of final judgment and order.
Sec.
19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Article 2.

Civil Remedy for Sales of Harmful Materials to Minors.

19-13. Commencement of civil proceeding.
19-18. Judgment; limitation to district.

ARTICLE 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(c) The building, or place, or vehicle, or the ground itself, in or upon which a nuisance as defined in subsections (a) or (b) above is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (a).

Legal Periodicals. — For article, "Obscenity: The Justices' (Not So) New Robes," see 8 Campbell L. Rev. 387 (1986).

CASE NOTES

Cited in Animal Protection Soc'y of Durham, Inc. v. State, 95 N.C. App. 258, 382 S.E.2d 801 (1989); State ex rel. Rhodes v. Simpson, 325 N.C. 522, 385 S.E.2d 329 (1989).

§ 19-1.1. Definitions.

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

b. Which depicts patently offensive representations of:

1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) "Matter" means a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:

a. Film or plate negative;

b. Film or plate positive;

c. Film designed to be projected on a screen for exhibition;

d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

e. Video tape or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself, but excluding a private dwelling place not used for a profit.

(8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall in-

clude, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (1).

Subdivision (2), as it is set out above, corrects an error in the indentation of the second paragraph thereof as it appears in the main volume.

Legal Periodicals. —

For article, "Regulation of Pornography — The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;

(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (6).

§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;

(3) All money or other valuable consideration received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subdivision (3).

§ 19-2.1. Action for abatement; injunction.

CASE NOTES

Quoted in State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986).

§ 19-3. Priority of action; evidence.

(a) The action provided for in this Chapter shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(c) At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. (Pub. Loc.

1913, c. 761, s. 27; 1919, c. 288; C.S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (b).

CASE NOTES

Applied in State ex rel. Gilchrist v. Cogdill, 74 N.C. App. 133, 327 S.E.2d 647 (1985).

§ 19-5. Content of final judgment and order.

If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal alcoholic beverages, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C.S., s. 3184; 1977, c. 819, s. 6; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the first paragraph.

CASE NOTES

Cited in State ex rel. Brown v. Smith, 74 N.C. App. 599, 328 S.E.2d 810 (1985).

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C.S., s. 3185; 1977, c. 819, s. 7; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the third paragraph.

ARTICLE 2.

Civil Remedy for Sales of Harmful Materials to Minors.

§ 19-13. Commencement of civil proceeding.

(a) Whenever the district attorney for any prosecutorial district has reasonable cause to believe that any person is engaged in selling, distributing or disseminating in any manner harmful material to minors or may become engaged in selling, distributing or disseminating in any manner harmful material to minors, the district attorney for the prosecutorial district in which such material is so offered for sale shall institute an action in the district court for that district for adjudication of the question of whether such material is harmful to minors.

(b) The provisions of the Rules of Civil Procedure and all existing and future amendments of said Rules shall apply to all proceedings herein, except as otherwise provided in this Article. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 73.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "prosecutorial district" for "judicial district" in two places in subsection (a) and inserted "is" preceding "so offered for sale" in that subsection.

§ 19-18. Judgment; limitation to district.

(a) In the event that the court or jury, as the case may be, fails to find the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment accordingly and shall dismiss the complaint.

(b) In the event that the court or jury, as the case may be, finds the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or giving away such material to minors or from permitting minors to inspect such material.

(c) No interlocutory order, judgment, or subsequent order of enforcement thereof, entered pursuant to the provisions of this Article, shall be of any force and effect outside the district court district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other district court district. (1969, c. 1215, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 74.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district" for "judicial district" in two places in subsection (c).

Chapter 19A.

Editor's Note. — The legislation and annotations affecting Chapter 19A have been included in a recently published replacement chapter.

Chapter 20.

Motor Vehicles.

Article 1.

Division of Motor Vehicles.

Sec.

20-4.01. Definitions.

Article 2.

Uniform Driver's License Act.

20-7. Issuance and renewal of drivers licenses.

20-15.1. Revocations when licensing privileges forfeited after conviction of a crime.

20-17. Mandatory revocation of license by Division.

20-28. Unlawful to drive while license revoked or while disqualified.

20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.

20-35. (Effective October 1, 1994 — See editor's note) Penalties for violating Article; defense to driving without a license.

Article 2A.

Afflicted, Disabled or Handicapped Persons.

20-37.6. Parking privileges for handicapped drivers and passengers.

Article 2B.

Special Identification Cards for Nonoperators.

20-37.7. Special identification card.

Article 2C.

Commercial Driver License.

20-37.15. Application for commercial drivers license.

20-37.16. Content of license; classifications and endorsements; fees.

Article 3.

Motor Vehicle Act of 1937.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

20-52. Application for registration and certificate of title.

20-54. (Effective October 1, 1996) Authority for refusing registration or certificate of title.

20-66. Renewal of vehicle registration.

Part 5. Issuance of Special Plates.

20-79. Dealer license plates.

Part 7. Title and Registration Fees.

20-88.1. Driver education.

20-95. Prorated fee for license plate issued for other than a year.

20-97. Taxes compensatory; no additional tax.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

20-118. Weight of vehicles and load.

20-125. Horns and warning devices.

20-127. (Effective until March 1, 1995) Windshields must be unobstructed.

20-127. (Effective March 1, 1995) Windshields must be unobstructed.

20-128.2. Motor vehicle emission standards.

20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

20-135.2A. Seat belt use mandatory.

20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

20-137.1. (Effective July 1, 1995) Child restraint systems required.

Part 10. Operation of Vehicles and Rules of the Road.

20-138.5. (See editor's note for date change) Habitual impaired driving.

Part 11. Pedestrians' Rights and Duties.

20-174.1. Standing, sitting or lying upon highways or streets prohibited.

Part 12. Sentencing; Penalties.

20-179.3. Limited driving privilege.

Article 3A.

Safety and Emissions Inspection Program.

Part 1. Safe Use of Streets and Highways.

Sec.
20-183.1. [Repealed.]

Part 2. Safety and Emissions Inspections of Certain Vehicles.

20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.
20-183.3. Scope of safety inspection and emissions inspection.
20-183.4. License required to perform safety inspection; qualifications for license.
20-183.4A. License required to perform emissions inspection; qualifications for license.
20-183.4B. Application for license; duration of license; renewal of mechanic license.
20-183.4C. When a vehicle must be inspected.
20-183.4D. Procedure when a vehicle is inspected.
20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.
20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.
20-183.6A. Administration of program; duties of license holders.
20-183.7. Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.
20-183.8. Infractions and criminal offenses for violations of inspection requirements.
20-183.8A. (Effective until October 1, 1996) Civil penalties against motorists for emissions violations.
20-183.8A. (Effective October 1, 1996) Civil penalties against motorists for emissions violations.
20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.
20-183.8C. Acts that are Type I, II, or III emissions violations.
20-183.8D. Suspension or revocation of license for safety violations.
20-183.8E. Administrative and judicial review.

Article 4.

State Highway Patrol.

20-193. [Repealed.]

Article 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

20-212 through 20-215. [Repealed.]

Article 7.

Miscellaneous Provisions Relating to Motor Vehicles.

20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.
20-218.1. [Repealed.]
20-218.2. Speed limit for nonprofit activity buses.
20-219. [Repealed.]

Article 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

20-231.1. [Repealed.]

Article 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

20-279.7A. Forms to carry statement concerning perjury.
20-279.34. [Repealed.]

Article 13.

The Vehicle Financial Responsibility Act of 1957.

20-309.1. [Repealed.]
20-310. (Repealed effective February 1, 1995) Grounds and procedure for cancellation or nonrenewal of a motor vehicle liability insurance policy; review by Commissioner of Insurance.
20-310.2. [Repealed effective February 1, 1995.]

Article 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

Sec.
20-376. Definitions.

Part 2. Authority and Powers of Division.

20-382. Registration of for-hire interstate motor carriers and verification that their vehicles are insured.
Sec.
20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.
20-382.2. Penalty for failure to comply with registration or insurance verification requirements.
20-384. Carriers must comply with safety rules and regulations.

Part 3. Fees and Charges.

20-385. Fee schedule.

ARTICLE 1.

Division of Motor Vehicles.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(0.1) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(0.2) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:
  a. Grams of alcohol per 100 milliliters of blood; or
  b. Grams of alcohol per 210 liters of breath.

(1) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:
  a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
  b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:
  a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
  b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:
  a. A single motor vehicle not included in Class B.
  b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.

(3b) Chemical Analyst. — A person granted a permit by the Department of Environment, Health, and Natural Resources under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:

a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. A Class B motor vehicle.

c. A Class C motor vehicle that meets either of the following descriptions:

1. Is designed to transport 16 or more passengers, including the driver.
2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. — Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;
b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. — A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. — Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. — Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

a. Exempt for-hire vehicles. — Vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the Utilities Commission or by the Interstate Commerce Commission; provided, that the term "for hire" shall include every arrangement by which the owner of a vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. The transportation of farm crops or products, including logs, bark, pulp, and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.
2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor, or trailer in a for-hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.
6. Vehicles whose sole operation in carrying the property of others is limited to the transportation of

the United States mail pursuant to a contract, or the extension or renewal of such contract.

7. Vehicles leased for a term of one year or more to the same person when used exclusively by such person in transporting his own property.

b. Common carrier of property vehicles. — Vehicles used for the transportation of property certified by the Utilities Commission or the Interstate Commerce Commission as common carriers.

c. Private hauler vehicles. — Vehicles used for the transportation of property not falling within one of the above-defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used for camping activities shall be classified as private passenger vehicles.

d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Contract carrier of property vehicles. — Vehicles used for the transportation of property under a franchise permit of a regulated contract carrier issued by the Utilities Commission or the Interstate Commerce Commission.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term "public vehicular area" shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term "public vehicular area" shall not be construed to mean any private property not generally open to and used by the public.

(32a) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)(a) Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

(b) Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(c) Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

(d) Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

(e) Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

(f) Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the regis-

tration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.

b. Careless and reckless driving.

c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

d. Improper or erratic lane changes.

e. Following the vehicle ahead too closely.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. — Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. — Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed. (1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, s. 1; c. 727, s. 219(1); c. 771, s. 1; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, added subdivisions (27)d3. and (27)d4.

CASE NOTES

Public Vehicular Area. — Area where an accident between plaintiff and defendant's truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994).

OPINIONS OF ATTORNEY GENERAL

Trailers designed to run upon the highways and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

ARTICLE 2.

Uniform Driver's License Act.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. — To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. — A Class A license authorizes the holder to drive any of the following:
  a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
  b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. — A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. — A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 days after becoming a resident.

(a1) Motorcycles and Mopeds. — To drive a motorcycle, a person must have a drivers license and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(b) Repealed by Session Laws 1993, c. 368, s. 1, c. 533, s. 12, effective January 1, 1995.

(b1) Application. — To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93- 579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(c) Tests. — To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5. The Division may not require a person who applies to renew a license that has not expired to take a written test or a road test unless one or more of the following applies:

(1) The person has been convicted of a traffic violation since the person's license was last issued.

(2) The applicant suffers from a mental or physical condition that impairs the person's ability to drive a motor vehicle.

The Division may not require a person who is at least 60 years old to parallel park a motor vehicle as part of a road test.

(c1) Insurance. — The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his or her drivers license.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) Repealed by Session Laws 1993, c. 368, s. 1, effective January 1, 1995.

(e) Restrictions. — The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) Expiration and Temporary License. — The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the 60-day period before the license expires. The Division may not accept an application for renewal made before the 60-day period begins.

Any person serving in the armed forces of the United States on active duty and holding a valid drivers license properly issued under this section and stationed outside the State of North Carolina may renew the license by making application to the Division by mail. Any other person, except a nonresident, who holds a valid drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph otherwise required for the renewal of a drivers license, and may impose in lieu thereof any conditions it considers appropriate to each particular application. A license renewed by mail is a temporary license that expires 30 days after the person to whom it is issued returns to this State.

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) Fees. — The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee for Each Year
Class A	$3.75

Class of Regular License	Fee for Each Year
Class B	3.75
Class C	2.50

The fee for a motorcycle endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The appropriate fee must be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. — Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ($25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five million dollars ($5,000,000), and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five million dollars ($5,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five million dollars ($5,000,000).

(j) Highway Fund. — The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(*l*) Learner's Permit. — Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain a drivers license under this Article may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ten dollars ($10.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder.

(*l*-1) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(m) Instruction Permit. — The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to any of the following applicants:

(1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.
(2) An applicant for certification under G.S. 20-218 as a school bus driver.

A restricted instruction permit authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division. The restrictions the Division may impose on a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) Format. — A drivers license issued by the Division must be tamperproof and must contain all of the following information:

(1) An identification of this State as the issuer of the license.
(2) The license holder's full name.
(3) The license holder's residence address.
(4) A color photograph of the license holder, taken by the Division.
(5) A physical description of the license holder, including sex, height, eye color, and hair color.
(6) The license holder's date of birth.
(7) The license holder's social security number or another identifying number assigned by the Division.
(8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
(9) The license holder's signature.
(10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds for each group. The Division shall determine the different colors to be used.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race.

(o) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(p) The Division must give the clerk of superior court in each county at least 50 copies of the driver license handbook free of charge. The clerk must give a copy to a person who requests it. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss.

1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865; 1971, c. 158; 1973, cc. 73, 705; c. 1057, s. 1; 1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 6; c. 340, s. 3; c. 865, ss. 1, 3; 1979, c. 37, s. 1; c. 113; c. 178, s. 2; c. 667, ss. 3-11, 41; c. 678, ss. 1-3; c. 801, ss. 5, 6; 1981, c. 42; c. 690, ss. 8-10; c. 792, s. 3; 1981 (Reg. Sess., 1982), c. 1257, s. 1; 1983, c. 443, s. 1; 1985, c. 141, s. 4; c. 682, ss. 1, 2; 1987, c. 869, ss. 10, 11; 1989, c. 436, ss. 1, 2; c. 771, s. 5; c. 786, s. 4; 1991, c. 478, s. 1; c. 689, s. 325; c. 726, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 27; c. 1030, s. 10; 1993, c. 368, s. 1; c. 533, ss. 2, 3, 12; 1993 (Reg. Sess., 1994), c. 595, ss. 1, 2; c. 750, s. 1; c. 761, s. 1.1.)

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 1, effective July 1, 1994, in the fourth paragraph of subsection (f) deleted "and who must take the written examination" preceding "pursuant," and substituted "issued a renewed license unless such person has furnished the" for "required to furnish." Because Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 3 provides that s. 1 of that act expires December 31, 1994, the amendment by s. 1 is not set out.

Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 2, effective January 1, 1995, in the fifth paragraph of subsection (c1) substituted "his or her drivers license" for "his drivers license and who is not required to take the written examination."

Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 1, effective January 1, 1995, in subsection (a), in the first sentence, substituted "the vehicle and must carry the license while driving the vehicle" for "that vehicle" at the end; redesignated former subsection (c) as present subsection (b1); in subsection (b1) deleted "and Tests" from the end of the section catchline, created the second and third sentences by adding the period, and deleted the former fourth sentence which read "The Division shall note an endorsement on the face of a drivers license," and added the remaining language of the subsection; added the subsection (c) designation and catchline; in subsection (e) deleted the former second sentence which read "A restriction shall be noted on the face of the license"; and rewrote subsection (n).

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 1.1, effective July 16, 1994, added subsection (p).

§ 20-11. (See editor's note for date change) Application of minors.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-15.1. Revocations when licensing privileges forfeited after conviction of a crime.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies. (1994, Ex. Sess., c. 20, s. 2.)

Editor's Note. — Session Laws 1994, Extra Session, c. 20, s. 6 makes this section effective May 1, 1994, and applicable to offenses committed on or after that date.

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

CASE NOTES

I. In General.

I. IN GENERAL.

Unconscious Driver. — Where defendant was already sedated and unconscious when a police officer arrived at a hospital to obtain a blood sample for chemical analysis such that officer did not advise defendant of his right to refuse the test, the trial court properly concluded that defendant was rendered unconscious by the doctors based solely on a medical decision to treat him, that the officer had nothing to do with this decision, and that defendant's statutory rights were not violated in that the officer who conducted the chemical analysis complied with the requirements of this section and § 20-139.1. State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993).

Relation to DWI charge. — The decision by Division of Motor Vehicles (DMV) to rescind the revocation of defendant's driver's license was independent of, and inconsequential to, defendant's criminal trial for driving while impaired (DWI). State v. O'Rourke, 114 N.C. App. 435, 442 S.E.2d 137 (1994).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

Cited in Melton v. Hodges, 114 N.C. App. 795, 443 S.E.2d 83 (1994).

§ 20-17. Mandatory revocation of license by Division.

The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
(2) Either of the following impaired driving offenses:
  a. Impaired driving under G.S. 20-138.1.
  b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.
(3) Any felony in the commission of which a motor vehicle is used.
(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j).

(11) Conviction of assault with a motor vehicle. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831; 1979, c. 667, ss. 20, 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 15; 1989, c. 771, s. 11; 1991, c. 726, s. 7; 1993 (Reg. Sess., 1994), c. 761, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "0.08" for "0.10" near the end of subdivision (2)b.

§ 20-19. Period of suspension or revocation.

CASE NOTES

The purpose of this section is to provide a uniform standard period for the withholding of the privilege to operate a motor vehicle following certain offenses. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

Subsections (d) and (j) of this section must be read together, giving consideration both to the legislative intent of ensuring standard penalties for the same offenses and to the policy of preventing circumvention of this section. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-28. Unlawful to drive while license revoked or while disqualified.

(a) **(Effective October 1, 1994 — See editor's note)** Driving While License Revoked. — Any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without a drivers license.

(a1) Driving Without Reclaiming License. — A person convicted under subsection (a) shall be punished as if he had been convicted of driving without a license under G.S. 20-7 if he demonstrates to the court that:

(1) At the time of the offense, his license was revoked solely under G.S. 20-16.5; and

(2)a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if he had been convicted of driving without a license under G.S. 20-7, and the conviction report sent to the Division must indicate that the person is to be so treated.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3, effective October 1, 1994.

(c) When Person May Apply for License. — A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) **(Effective October 1, 1994 — See editor's note)** Driving While Disqualified. — A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A; 1989, c. 771, s. 4; 1991, c. 509, s. 2; c. 726, s. 12; 1993, c. 539, ss. 320-322; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, ss. 2, 3.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, deleted "other than permanently" following "revoked" in the first sentence of subsection (a), and repealed subsection (b).

§ 20-29. (Effective October 1, 1994 — See editor's note) Surrender of license.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-30. (See editor's note for date change) Violations of license or learner's permit provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-31. (See editor's note for date change) Making false affidavits perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.

(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class I felony:

(1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a special identification card.

(2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special identification card.

(3) Knowing it is false, enters false information concerning a drivers license or a special identification card in the records of the Division.

(b) Defenses Precluded. — The fact that the Division does not issue a license or a special identification card after an employee or an agent of the Division charges or accepts money or another thing of value for its issuance is not a defense to a criminal action under this section. It is not a defense to a criminal action under this section to show that the person who received or was intended to receive the license or special identification card was eligible for it.

(c) Dismissal. — An employee of the Division who violates this section shall be dismissed from employment and may not hold any public office or public employment in this State for five years after the violation. If a person who violates this section is an employee of the agent of the Division, the Division shall cancel the contract of the agent unless the agent dismisses that person. A person dismissed by an agent because of a violation of this section may not hold any public office or public employment in this State for five years after the violation. (1951, c. 211; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1993, c. 533, s. 8, c. 539, s. 1250; 1994, Ex. Sess., c. 14, s. 30.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 30(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 1250, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), which would have amended this section effective October 1, 1994, as it read prior to amendment by Session Laws 1993, c. 533, s. 8, by substituting "Class I felony which may include" for former punishment provisions.

Effect of Amendments. —

The 1994 Extra Session amendment by c. 14, s. 30(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class I felony" for "Class J felony" in the introductory language of subsection (a).

§ 20-35. (Effective October 1, 1994 — See editor's note) Penalties for violating Article; defense to driving without a license.

(a) Penalty. — A violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4, effective October 1, 1994.

(c) Defenses. — A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.

(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.

(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense. (1935, c. 52, s. 29; 1991, c. 726, s. 14; 1993, c. 539, s. 324; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, substituted "violating Article; defense to driving without a license" for "misdemeanor" in the section catchline, rewrote subsection (a), repealed subsection (b), and inserted "Defenses. —" in subsection (c).

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.6. Parking privileges for handicapped drivers and passengers.

(a) General Parking. — Any vehicle that is driven by or is transporting a person who is handicapped and that displays a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated as restricted to vehicles driven by or transporting the handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. — If the handicapped person is a registered owner of a vehicle, the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing Placards. — A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard.

(c1) Application and Renewal; Physician's Certification. — The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and the renewal shall require a medical recertification that the person is handicapped. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards.— All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1).

(d) Designation of Parking Spaces. — Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the law.

(d1) Repealed by Session Laws 1991, c. 530, s. 4.

(e) Enforcement of Handicapped Parking Privileges. — It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons when the vehicle does not display the distinguishing license plate, removable windshield placard, or temporary removable windshield placard as provided in this section, or a disabled veteran registration plate issued under G.S. 20-79.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas.

(f) Penalties for Violation. —

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or

negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies. (1971, c. 374, s. 1; 1973, cc. 126, 1384; 1977, c. 340, s. 2; 1979, c. 632; 1981, c. 682, s. 7; 1983, c. 326, ss. 1, 2; 1985, c. 249; c. 586; c. 764, s. 24; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 843; 1989, c. 760, s. 3; 1989 (Reg. Sess., 1990), c. 1052, ss. 1-3.1; 1991, c. 411, s. 2; c. 530, s. 4; c. 672, s. 5; c. 726, s. 23; c. 761, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 30; c. 1043, s. 4; 1993, c. 373, s. 1; 1994, Ex. Sess., c. 14, s. 31.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, inserted "Class 2" in the second sentence of subsection (c3).

ARTICLE 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card.

(a) Eligibility. — A person who is a resident of this State is eligible for a special identification card.

(b) Application. — To obtain a special identification card from the Division, a person must complete the application form used to obtain a drivers license.

(c) Format. — A special identification card shall be similar in size, shape, and design to a drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.

(d) Expiration and Fee. — A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(e) **(Effective October 1, 1994 — See editor's note)** Offense. — Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.

(f) Records. — The Division shall maintain a record of all recipients of a special identification card.

(g) No State Liability. — The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.

(h) Advertising. — The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5; 1979, c. 469, c. 667, s. 30; 1981, c. 673, ss. 1, 2; c. 690, s. 12; 1981 (Reg. Sess., 1982), c. 1257, s. 3; 1983, c. 443, s. 2; 1983 (Reg. Sess., 1984), c. 1062, s. 7; 1985, c. 141, s. 5; 1991, c. 689, s. 328; 1993, c. 368, s. 3; c. 490, ss. 1, 2; c. 539, s. 325; c. 553, s. 77; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 750, s. 2.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, added the subsection catchlines; in subsection (a) substituted the present language for "The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 11 years or older who is a resident of the State of North Carolina"; in subsection (b) substituted the present language for "Every application for a special identification card shall be made on the approved form furnished by the Division and shall be accompanied by a birth certificate and other proof of identification which shall be returned when the special identification card is issued"; in subsection (c), in the first sentence added "A" at the beginning, deleted "cards shall be issued with differing color photographic backgrounds according to the holder's age at time of issuance for the following age groups: (1) Persons who have not attained the age of 21 years. (2) Persons who have attained the age of 21 years" following "identification," deleted "The" preceding "card," substituted "drivers" for "driver's," and added the second sentence; and in subsection (f) deleted "of Motor Vehicles" following "Division," and deleted the former second sentence which read "The Division may promulgate any rules and regulations it deems necessary for the effective implementation of the provisions of this section."

§ 20-37.8. (See editor's note for date change) Fraudulent use prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 2C.

Commercial Driver License.

§ 20-37.15. Application for commercial drivers license.

(a) An application for a commercial drivers license must include the information required by G.S. 20-7 for a regular drivers license and a consent to release driving record information.

(a1) The application must be accompanied by a nonrefundable application fee of twenty dollars ($20.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

(b) When the holder of a commercial drivers license changes his name or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14. (1989, c. 771, s. 2; 1991, c. 726, s. 17; 1993 (Reg. Sess., 1994), c. 750, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, rewrote subsection (a).

§ 20-37.16. Content of license; classifications and endorsements; fees.

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL — A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL — A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL — A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles carrying hazardous materials, other than tank vehicles
L	Double trailers that are longer combination vehicles
M	Motorcycles
N	Tank vehicles not carrying hazardous materials

Endorsement	Vehicles That Can Be Driven
P	Vehicles carrying passengers
T	Double trailers other than longer combination vehicles
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to a person whose license is restricted to driving a school bus or school activity bus or to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes;

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions; and

(3) Farm vehicles that meet all of the following criteria:

a. Controlled and operated by the farmer or the farmer's employee and used exclusively for farm use;

b. Used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm;

c. Not used in the operations of a common or contract motor carrier; and

d. Used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation. (1989, c. 771, s. 2; 1991, c. 726, s. 18; 1993, c. 368, s. 4; 1993 (Reg. Sess., 1994), c. 750, ss. 4, 6.)

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 4, effective January 1, 1995, rewrote subsection (a).

Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 6, effective July 15, 1994, in subsection (c), in the second paragraph deleted "written" preceding "test" throughout the paragraph.

§ 20-37.21. (See editor's note for date change) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. (See editor's note for date change) Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees; licenses and plates for undercover officers.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 769, in s. 20 provides: "The Division of Motor Vehicles shall report quarterly, beginning in January 1995, to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, on the Emission Inspection Program's compliance with regulations the Environmental Protection Agency adopted for the inspection and maintenance activities required in the Clean Air Amendments of 1990. The report shall include the receipts and expenditures from the Emissions Program Account."

§ 20-45. (See editor's note for date change) Seizure of documents and plates.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-47. (See editor's note for date change) Division may summon witnesses and take testimony.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-52. Application for registration and certificate of title.

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the Division. The application form must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:
- a. The owner's mailing address and residence address.
- b. The owner's social security number.

(1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:
- a. The make, model, type of body, and vehicle identification number of the vehicle.
- b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3; 1975, c. 716, s. 5; 1991, c. 183, s. 2; 1993 (Reg. Sess., 1994), c. 750, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, rewrote subsection (a).

§ 20-52.1. (See editor's note for date change) Manufacturer's certificate of transfer of new motor vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-54. (Effective October 1, 1996) Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.
(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.
(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.
(5) The required fee has not been paid.
(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid. (1937,

c. 407, s. 19; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 7.)

For this section as in effect until October 1, 1996, see the main volume.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in subdivision (1) deleted "That" from the beginning, substituted "a false or fraudulent statement" for "any false or fraudulent statement that," substituted "Division, or" for "Division or that"; in subdivision (2) deleted "That" from the beginning; in subdivision (3) deleted "That" from the beginning, substituted "another person who has a valid lien against the vehicle" for "other person having valid lien upon such vehicle"; deleted "That" from the beginning of subdivisions (4) and (5); added subdivision (6), and made stylistic changes.

§ 20-59. (Effective October 1, 1994 — See editor's note) Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-63. (See editor's note for date change) Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-66. Renewal of vehicle registration.

(a) Annual Renewal. — The registration of a vehicle must be renewed annually. To renew the registration of a vehicle, the owner of the vehicle must file an application with the Division and pay the required registration fee. The Division may receive and grant an application for renewal of registration at any time before the registration expires.

(b) Method of Renewal. — When the Division renews the registration of a vehicle, it must issue a new registration card for the vehicle and either a new registration plate or a registration renewal sticker. The Division may renew a registration plate for any type of vehicle by means of a renewal sticker.

(b1) Repealed by Session Laws 1993, c. 467, s. 2.

(c) Renewal Stickers. — A registration renewal sticker issued by the Division must be displayed on the registration plate that it renews in the place prescribed by the Commissioner and must indicate the period for which it and the registration plate on which it is displayed are valid. Except where physical differences between a registration renewal sticker and a registration plate render a provision of this Chapter inapplicable, the provisions of this Chapter relating to registration plates apply to registration renewal stickers.

(d), (e) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, § 5, effective July 16, 1994.

(f) Repealed by Session Laws 1993, c. 467, s. 2.

(g) When Renewal Sticker Expires. — The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker expired if the vehicle is not registered under the International Registration Plan. If the vehicle is registered under the International Registration Plan, it is not lawful to operate the vehicle on a highway after the sticker expires.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly interval beginning at nine months and ending at eighteen months.

(h) When Calendar-Year Plate Expires. — The registration of a vehicle that is not renewed by means of a registration renewal sticker expires at midnight on December 31 of each year. It is lawful, however, to operate the vehicle on a highway until midnight on the following February 15.

(i) Property Tax Consolidation. — When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25¢). (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 337; 1979, 2nd Sess., c. 1280, ss. 2, 3; 1981 (Reg. Sess., 1982), c. 1258, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 24; 1991, c. 624, ss. 6, 7; c. 672, s. 7; c. 726, s. 23; 1993, c. 467, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, deleted "prorated fees" at the end of the section catchline; in subsection (b), deleted "not" following "Division may," substituted "any type of vehicle" for "a vehicle," deleted "unless the Division is authorized to use that method of renewal" at the end of the second sentence, and deleted the last sentence, which listed the types of vehicles for which renewal stickers were authorized; repealed subsections (d) and (e) regarding staggered expiration and prorated fee; and, in subsection (g), added "if the vehicle is not registered under the International Registration Plan" at the end of the first sentence of the first paragraph, added the second sentence of that paragraph, and added the second paragraph.

§ 20-71. (See editor's note for date change) Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3A. Salvage Titles.

§ 20-71.4. (Effective October 1, 1994 — See editor's note) Failure to disclose damage to a vehicle shall be a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 4. Transfer of Title or Interest.

§ 20-72. (See editor's note for date change) Transfer by owner.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-73. (See editor's note for date change) New owner must get new certificate of title.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-74. (Effective October 1, 1994 — See editor's note) Penalty for making false statement about transfer of vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-75. (Effective October 1, 1994 — See editor's note) When transferee is dealer or insurance company.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-77. (See editor's note for date change) Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 5. Issuance of Special Plates.

§ 20-79. Dealer license plates.

(a) How To Get a Dealer Plate. — A dealer licensed under Article 12 of this Chapter may obtain a dealer license plate by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. — A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending April 30 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending April 30 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending April 30 but has sold at least that number since May 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending April 30.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

(c) Form and Duration. — A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. In addition, a dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate.

A dealer license plate is issued for a fiscal year beginning July 1 and ending June 30. During the fiscal year for which it is issued, a dealer may transfer a dealer license plate from one vehicle to another. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.
(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.
(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) **(Effective until July 1, 1996)** Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.
(5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plates issued to the dealer and any demonstration permit issued to that person while driving the motor vehicle:
    a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.
    b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

§ 20-79(d) is set out twice. See notes.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm-related equipment sold, traded, or serviced by the dealer.

(d) **(Effective July 1, 1996)** Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.

(2) Is not consigned to the dealer.

(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.

(4) Is not used by the dealer in another business in which the dealer is engaged.

(5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plates issued to the dealer and any demonstration permit issued to that person while driving the motor vehicle:

  a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.

  b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. — The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15; 1975, c. 716, s. 5; 1979, c. 239; c. 612, s. 1; 1985, c. 764, s. 21; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1989, c. 770, s. 74.1(a); 1993, c. 321, s. 169.4; c. 440, s. 2; c. 539, s. 343; 1993 (Reg. Sess., 1994), c. 697, ss. 1, 2; c. 761, s. 6.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 1996. The second version of subsection (d) set out above is effective July 1, 1996.

Editor's Note. — The note appearing in the 1993 replacement pamphlet for this Chapter which refers to Session Laws 1993, c. 310, belongs under § 20-97.

Session Laws 1993, c. 539, s. 343, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, and applicable to offenses occurring on or after that date, amended this section as it read prior to the amendment by Session Laws 1993, c. 440, s. 2, by substituting "Class 2 misdemeanor" for "misdemeanor and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) and may be imprisoned for not more than 60 days, or both such fine and imprisonment" in the last paragraph of subsection (a). Because the language amended by c. 539, s. 343 has been deleted by the amendment by c. 440, s. 2, the amendment by c. 539, s. 343 was not given effect. Section 343 of Chapter 539 of the 1993 Session Laws was repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 6, effective July 16, 1994.

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 697, s. 2, effective July 6, 1994, substituted "plates issued to the dealer" for "plate displayed on the motor vehicle" in subdivision (d)(5).

Session Laws 1993 (Reg. Sess., 1994), c. 697, s. 1, effective July 1, 1996, deleted the former last paragraph of subsection (d) of this section, which read "A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm related equipment sold, traded, or serviced by the dealer."

Part 7. Title and Registration Fees.

§ 20-88.1. Driver education.

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. The driver education program established pursuant to this section shall include instructions on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter. In addition, this program shall include at least six hours of instruction on the offense of driving while impaired and related subjects.

(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.

Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the Highway Fund.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of Education, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002; 1983, c. 761, s. 141; 1985 (Reg. Sess., 1986), c. 982, s. 25; 1991, c. 689, s. 32(a); 1993 (Reg. Sess., 1994), c. 761, s. 7.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, added subsection (d).

§ 20-94. (Effective October 1, 1994 — See editor's note) Partial payments.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-95. Prorated fee for license plate issued for other than a year.

(a) Calendar-Year Plate. — The fee for a calendar-year license plate issued on or after April 1 of a year is a percentage of the annual fee determined in accordance with the following table:

Date Plate Issued	Percentage of Annual Fee
April 1 through June 30	75%
July 1 through September 30	50
October 1 through December 31	25.

(a1) Plate With Renewal Sticker. — The fee for a license plate whose registration is renewed by means of a registration renewal sticker for a period of other than 12 months is a prorated amount of the annual fee. The prorated amount is one-twelfth of the annual fee multiplied by the number of full months in the period beginning the date the renewal sticker becomes effective until the date the renewal sticker expires, rounded to the nearest dollar.

(b) Scope. — This section does not apply to license plates issued pursuant to G.S. 20-79.1, 20-79.2, 20-84, 20-84.1, 20-87(9) or (10), and 20-88(c). (1937, c. 407, s. 59; 1947, c. 914, s. 3; 1979, c. 476; 1991, c. 672, s. 6; c. 726, s. 23; 1993, c. 440, s. 6; 1993 (Reg. Sess., 1994), c. 761, s. 8.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "Prorated fee for license plate issued for other" for "Licenses for less" in the section catchline, and rewrote the section, in part by adding subsection (a1).

§ 20-96. (Effective October 1, 1994 — See editor's note) Overloading.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-97. Taxes compensatory; no additional tax.

(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than five dollars ($5.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab.

(a1) to (a5) Repealed by Session Laws 1983, c. 188, s. 2.

(b) No additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this Article nor shall any county, city or town impose a franchise tax or other fee upon them, except that cities and towns may levy a license tax not in excess of fifteen dollars ($15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof.

(c) Repealed by Session Laws 1993, c. 321, s. 146, effective July 1, 1993. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5; 1977, c. 433, s. 1; c. 880, s. 1; 1979, c. 173, s. 1; c. 216, s. 1; c. 217; c. 248, s. 1; c. 398; c. 400, s. 1; c. 458; c. 530, s. 1; c. 790; 1979, 2nd Sess., c. 1152; c. 1153, s. 1; c. 1155, s. 1; c. 1189; c. 1308, s. 1;

1981, cc. 74, 129, 210, 228, 310, 311, 312, 315, 368, 370, s. 10; c. 415, s. 10; cc. 857, 858, 991; 1981 (Reg. Sess., 1982), cc. 1202, 1250; 1983, cc. 9, 75; c. 106, s. 1; c. 188, ss. 1, 2; 1993, c. 321, s. 146; c. 456, s. 1.)

Local Modification. — Alleghany: 1993, c. 456, s. 1.1, 1993 (Reg. Sess., 1994), c. 761, s. 9; Pamlico: 1993 (Reg. Sess., 1994), c. 751, s. 4.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1993, c. 479, s. 4, repealed Session Laws 1981, c. 310, which had amended this section by adding the Town of Enfield to a list of cities.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102.1. (Effective October 1, 1994 — See editor's note) False report of theft or conversion a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106. (Effective October 1, 1994 — See editor's note) Receiving or transferring stolen vehicles.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.1. (Effective October 1, 1994 — See editor's note) Fraud in connection with rental of motor vehicles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.2. (See editor's note for date change) Sublease and loan assumption arranging regulated.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-107. (Effective October 1, 1994 — See editor's note) Injuring or tampering with vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-108. (See editor's note for date change) Vehicles or component parts of vehicles without manufacturer's numbers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109. (See editor's note for date change) Altering or changing engine or other numbers.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109.1. (See editor's note for date change) Surrender of titles to salvage vehicles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-111. (See editor's note for date change) Violation of registration provisions.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-112. (Effective October 1, 1994 — See editor's note) Making false affidavit perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115.1. (See editor's note for date change) Limitations on tandem trailers and semitrailers on certain North Carolina highways.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-116. (See editor's note for date change) Size of vehicles and loads.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-118. Weight of vehicles and load.

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. — The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. — The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. — Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. — The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. — Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
4	38000					
5	38000					
6	38000					
7	38000					

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000**	66500	72000	77500
31		59000	62500**	67500	72500	78000
32		60000	63500**	68000	73000	78500
33			64000**	68500	74000	79000
34			64500**	69000	74500	80000
35			65500**	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			
53			77500			
54			78000			
55			78500			
56			79500			
57			80000			

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.
**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. — The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products originating from a farm to first market.
c. Unprocessed forest products originating from a farm or from woodlands to first market.
d. Livestock or poultry from their point of origin to first market.
e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.
f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable" and "processing" have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12, effective July 16, 1994.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8),

spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, and does not exceed its registered weight:

a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13, effective July 16, 1994.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds.

(d) The Department of Transportation is authorized to abrogate certain exceptions. The exceptions provided for in G.S. 20-118(c)(4) and 20-118(c)(5) as applied to any light-traffic road may be abrogated by the Department of Transportation upon a determination of the Department of Transportation that undue damage to such light-traffic road is resulting from such vehicles exempted by G.S. 20-118(c)(4) and 20-118(c)(5). In those cases where the exemption to the light-traffic roads are abrogated by the Department of Transportation, the Department shall post the road to indicate no exemptions.

(e) Penalties. —

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) Except as provided in subdivision (4) of this subsection, for a violation of an axle-group weight limit set in subdivision

(b)(3) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle in accordance with the following schedule: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. These penalties apply separately to each axle-group weight limit violated. The penalty shall be assessed on each pound of weight in excess of the maximum permitted.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section is not punishable under G.S. 20-176.

(f) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 15, effective July 16, 1994.

(g) General Statutes 20-118 shall not be construed to permit the gross weight of any vehicle or combination in excess of the safe load carrying capacity established by the Department of Transportation on any bridge pursuant to G.S. 136-72.

(h) No tolerance on the single-axle weight, tandem-axle weight, or axle-group weight provided for in G.S. 20-118(b) shall be granted administratively or otherwise.

(i) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 16, effective July 16, 1994.

(j) Repealed by Session Laws 1987, c. 392.

(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 44,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4; 1991, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 905, s. 1; 1993, c. 426, ss. 1, 2; c. 470, s. 1; c. 533, s. 11; 1993 (Reg. Sess., 1994), c. 761, ss. 10-16.)

Editor's Note. —
The second Editor's Note under this section in the main pamphlet may be disregarded.

Effect of Amendments. —
The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in subdivision (c)(1), substituted "the consecutive sets" for "such consecutive sets" in the first sentence, and deleted the second and third sentences, which provided for an exception for tank trailers, dump trailers, and ocean going transport containers; rewrote subdivision (c)(5); re-

pealed subdivision (c)(9) and subsections (f) and (i); rewrote subdivision (c)(12), repealing subdivision (c)(12)b. therein; and, in subsection (e), rewrote subdivisions (2), (4), and (5).

§ 20-118.1. (Effective October 1, 1994 — See editor's note) Peace officer may weigh vehicle and require removal of excess load; refusal to permit weighing.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-119. (See editor's note for date change) Special permits for vehicles of excessive size, weight, or number of units; fees.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-120. (Effective October 1, 1994 — See editor's note) Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-124. (See editor's note for date change) Brakes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-125. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the Commissioner.

(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Repealed by Session Laws 1979, c. 653, s. 2. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257; 1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1; 1979, c. 653, s. 2; 1981, c. 964, s. 19; 1983, c. 32, s. 2; c. 768, s. 5; 1987, c. 266; 1989, c. 537; 1989 (Reg. Sess., 1990), c. 1020, s. 1; 1993 (Reg. Sess., 1994), c. 719, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, inserted "or by the Division of Emergency Management" in the first paragraph of subsection (b).

§ 20-125.1. Directional signals.

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-127. (Effective until March 1, 1995) Windshields must be unobstructed.

(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. Provided, on any vehicle equipped by its manufacturer with such devices on both the right and left sides of windshield, both such devices shall be in working order. The device required by this subsection shall be of a type approved by the Commissioner.

(c) The windshield, rear and side glasses of a motor vehicle must be free from discoloration which impair the driver's vision or create a hazard.

§ 20-127 is set out twice. See notes.

(d) On or after January 1, 1989, it shall be unlawful to operate a motor vehicle registered or which is required to be registered in this State under this Chapter, upon any highway or public vehicular area with a windshield or a front side window to the immediate right or left of the operator, or a rear window used for visibility, which has been darkened, smoked, or tinted after factory delivery. Provided, however, after first sale of the vehicle, a single application of tinted film which has been registered with and approved by the Commissioner of Motor Vehicles shall be lawful if the manufacturer's label is implanted between the film and glass in the lower left section of each darkened window and is legible from outside the vehicle. The label shall indicate the film registration number, the name and address of the manufacturer and a certification of compliance with North Carolina law. No film or darkening material may be applied on the windshield except to replace the sunshield in the uppermost area as installed by the manufacturer of the vehicle, in which case the label shall be implanted between the film and glass in the upper left section of the windshield and be legible from outside the vehicle. A rear window shall be required for visibility on every vehicle unless the vehicle is equipped with an outside mirror of a type approved by the Commissioner which eliminates the requirement for an inside rearview mirror under the provisions of G.S. 20-126(a) and (b).

(e) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 4, effective October 1, 1994.

(f) Before shipping or making any tinted film available for installation on a motor vehicle in this State, the manufacturer shall apply to the Commissioner for approval and registration of its tinted film and for a label to be used in the identification and certification of compliance with light transmittance and reflectance standards. The Commissioner shall approve tinted film to be used in the front windows or a rear window if required for visibility if the manufacturer demonstrates that it has at least fifty percent (50%) light transmittance if it is to be used on front, side, or rear windows and a luminous reflectance of not more than twenty percent (20%). A fee shall be paid by the manufacturer with each application for film approval and registration in the approximate amount of the cost to the Division in the review of the applications.

(g) **(Effective October 1, 1994 — See editor's note)** With any delivery of tinted film for installation in vehicles, where approved film is required, the manufacturer shall provide the required labels with written instructions and materials for permanent installation. The use of any label that is not registered, or the misuse of any registered label to mislead motor vehicle safety inspectors, law enforcement officers, or other officials shall constitute a Class 2 misdemeanor.

(h) Subsections (d) through (g) of this section shall apply only to darkened, smoked, or tinted film installed on motor vehicle windows after factory delivery and after July 1, 1988, and shall not apply to vehicles that are registered in another state, are not required to be registered in this State, and were in compliance with the standards required in the state of registration at the time of registration.

§ 20-127 is set out twice. See notes.

(i) Subsections (d) through (g) of this section do not apply to law-enforcement K-9 vehicles and films used to darken windows on those units. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567; 1987 (Reg. Sess., 1988), c. 1082, ss. 7-8.1; 1989, c. 770, s. 66; 1991 (Reg. Sess., 1992), c. 1007, s. 34; 1993, c. 539, s. 360; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 754, s. 4.)

Section Set Out Twice. — The section above is effective until March 1, 1995. For the section as amended effective March 1, 1995, see the following section, also numbered § 20-127.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 4, effective October 1, 1994, repealed subsection (e).

§ 20-127. (Effective March 1, 1995) Windshields must be unobstructed.

(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. Provided, on any vehicle equipped by its manufacturer with such devices on both the right and left sides of windshield, both such devices shall be in working order. The device required by this subsection shall be of a type approved by the Commissioner.

(c) It is unlawful to operate on a highway a motor vehicle that is registered or required to be registered in this State if it has a sunscreen device or tinted film on its windshield, its front side wings, its front side windows adjacent to the right and left of the driver, or its windows to the rear of the driver that was installed after factory delivery and does not meet the requirements of this section.

(d) A sunscreen device or tinted film must be a nonreflective type and may not be red, yellow, or amber in color. A sunscreen device or tinted film may be used only along the top of a windshield and may not extend downward beyond the ASI line or more than five inches, whichever is closer to the top of the windshield. A sunscreen device or tinted film may not be applied to a window other than the windshield if it reduces the total light transmission of the window to less than thirty-five percent (35%) or it has a reflectance of light exceeding twenty percent (20%).

(e) A vehicle that has a window with an after-factory installed sunscreen device or tinting film must display the installer's sticker. Class 2

(f) A person may not apply a sunscreen device or tinting film to a window that does not meet the requirements of this section. A person who applies a sunscreen device or tinting film to a window must place a sticker between the film and the glass in the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the installer by name and street address.

(g) The Commissioner shall certify window tinting inspectors. To obtain a certification as a window tinting inspector, a person must meet the qualifications set by the Commissioner and have the testing equipment required by the Commissioner. Certification as a window tinting inspector is valid for four years. The Commissioner may revoke a certification for violations of this section.

(h) Testimony that a window of a vehicle failed to meet the light transmittance or reflectance requirements of this section using equipment, methods, or procedures approved by the Commissioner is prima facie evidence of a violation of this section. It is a defense to a window tinting violation under this section if the driver charged produces a certification issued by a certified window tinting inspector showing that the sunscreen device or tinting film meets the requirements of this section. It is a further defense to show that any sign, poster, or other nontransparent material, sunscreen device, or tinting film has been removed or modified so that the vehicle is in compliance with this section.

(i) This section does not apply to windows behind the driver of excursion passenger vehicles as defined in G.S. 20-4.01(27)a., for-hire passenger vehicles as defined in G.S. 20-4.01(27)b., common carriers of passengers as defined in G.S. 20-4.01(27)c., ambulances as defined in G.S. 20-4.01(27)f., property hauling vehicles as defined in G.S. 20-4.01(31), limousines, motor homes, law enforcement K-9 vehicles, or vehicles that are registered in another state and are in compliance with the standards required in that state.

(j) A person who registers a vehicle in this State that has had an after-factory sunscreen device or window tinting installed outside the State that does not display a sticker equivalent to the one required by subsection (e) of this section must have the device or window tinting inspected by a certified window tinting inspector. If the sunscreen device or window tinting meets the requirements of this section, the inspector must place a unique sticker on the inside of each window to which the sunscreen device or window tinting is applied. The sticker must be placed on the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the person affixing the sticker by name and street address. The Commissioner shall issue stickers for placement under this section. The Commissioner may charge a fee, not to exceed two dollars ($2.00), for a sticker to recoup the cost of producing the unique sticker authorized by this subsection. The fee charged by a person

§ 20-127 is set out twice. See notes.

who inspects a window under this subsection may not exceed ten dollars ($10.00).

(k) A violation of subsection (c) or (j) of this section shall be a misdemeanor punishable as provided in G.S. 20-176(c). A violation of any other subsection of this section is an infraction. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567; 1987 (Reg. Sess., 1988), c. 1082, ss. 7-8.1; 1989, c. 770, s. 66; 1991 (Reg. Sess., 1992), c. 1007, s. 34; 1993, c. 539, s. 360; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 683, s. 1; c. 754, s. 4.)

Section Set Out Twice. — The section above is effective March 1, 1995. For the section as in effect until March 1, 1995, see the preceding section, also numbered § 20-127.

Editor's Note. — Session Laws 1993, c. 539, s. 360, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, and applicable to offenses occurring on or after that date, amended this section as it read prior to the amendment by Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, in the coded bill drafting format provided by § 120-20.1, by inserting "Class 2" preceding "misdemeanor" in former subsection (g). Subsection (e) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, effective March 1, 1995, rewrote subsections (c) through (i) and added subsections (j) and (k).

§ 20-128.2. Motor vehicle emission standards.

(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) shall be implemented when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality in an area will be improved by the implementation of a motor vehicle inspection/maintenance program within a specified county or group of counties, as necessary to effect attainment or preclude violations of the National Ambient Air Quality Standards for carbon monoxide or ozone; provided the Environmental Management Commission may prescribe different vehicle emission limits for different areas as may be necessary and appropriate to meet the stated purposes of this section.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 5, effective October 1, 1994. (1979, 2nd Sess., c. 1180, s. 2; 1989, c. 391, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, repealed subsection (b).

§ 20-129. Required lighting equipment of vehicles.

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;
(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
(10) A vehicle operated by medical doctors or anesthetists in emergencies;
(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;
(13) Any lights that may be prescribed by the Interstate Commerce Commission;
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;
(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and

(16) A State emergency management vehicle.

(c) It is unlawful for any person to install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "blue light" means an operable blue light not sealed in the manufacturer's original package which:

(1) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(d) The provisions of subsection (c) of this section do not apply to a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties.

(e) **(Effective October 1, 1994 — See editor's note)** Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2; 1979, c. 653, s. 1; c. 887; 1983, c. 32, s. 1; c. 768, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 50; 1989, c. 537, s. 2; 1989 (Reg. Sess., 1990), c. 1020, s. 2; 1991, c. 263, s. 1; 1993, c. 539, s. 361; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 719, s. 1.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, deleted "and" from the end of subdivision (b)(14); added "and" at the end of subdivision (b)(15); and added subdivision (b)(16).

§ 20-135.2A. Seat belt use mandatory.

(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.

(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural or commercial purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(e) Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this section and shall include a report of findings in its report on highway safety no later than October 1, 1988. (1985, c. 222, s. 1; 1987, c. 623; 1991, c. 448, s. 1; 1994, Ex. Sess., c. 5, s. 1.)

Effect of Amendments. — The 1994 Extra Session amendment, effective March 3, 1994, and applicable to any trial, action, or proceeding commenced on or after that date, added "or as justification for the stop of a vehicle or detention of a vehicle operator and passengers" in subsection (d).

CASE NOTES

This section precludes the introduction of any evidence regarding seat belt use, etc. — The evidence of the failure of the defendant to use her seat belt was not admissible in a DWI trial. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

In the 1987 amendment to subsection (d) not only did the General Assembly retain the exclusion of the seat belt defense in civil cases, but expanded the act so as to exclude evidence of the failure to have a fastened seat belt in place in other criminal proceedings. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section shall not apply when:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child;
(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner;
(3) An emergency situation exists;
(4) The vehicle is being operated in a parade pursuant to a valid permit.
(5) The vehicle is being operated in an agricultural enterprise; or
(6) the vehicle is being operated in a county which has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. (1993 (Reg. Sess., 1994), c. 672, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 672, s. 4, makes this section effective January 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 2 provides: "The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designated to encourage compliance with this act and to inform the public on the requirements and penalties specified in this law."

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 3 provides: "The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this act and shall include a report of findings in its report on highway safety no later than January 1, 1998."

§ 20-136. (See editor's note for date change) Smoke screens.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-137.1. (Effective July 1, 1995) Child restraint systems required.

(a) Every driver who is transporting a child of less than 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) when the child's personal needs are being attended to; (iii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iv) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under four years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218; 1993 (Reg. Sess., 1994), c. 748, s. 1.)

For this section as in effect until July 1, 1995, see the main volume.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1995, in subsection (a), in the first sentence substituted "12" for "six," substituted "meets" for "met applicable," and inserted "applicable," and in the second sentence substituted "four" for "three"; in subsection (b) deleted former subdivision (i) which read "to vehicles registered in another state or jurisdiction" and renumbered the remaining subdivisions accordingly; and in the second sentence of subsection (c) substituted "four" for "three."

§ 20-137.2. (See editor's note for date change) Operation of vehicles resembling law-enforcement vehicles unlawful; punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138.1. Impaired driving.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); Camalier v. Jeffries, 113 N.C. App. 303, 438 S.E.2d 427 (1994); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

§ 20-138.2. (See editor's note for date change) Impaired driving in commercial vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-138.3. (See editor's note for date change) Driving by provisional licensee after consuming alcohol or drugs.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) **(Effective October 1, 1994 — See editor's note)** A person convicted of violating this section shall be punished as a Class G felon. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest. (1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1994 Extra Session amendment by ch. 14, s. 32, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class I felon" for "Class I" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 34.1, effective October 1, 1994, and applicable to offenses occurring on or after that date, added subsection (e).

Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 32, effective October 1, 1994, substituted "Class G felon" for "Class I felon" in subsection (b).

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Quoted in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994).

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

CASE NOTES

I. In General.

I. IN GENERAL.

Applied in State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

§ 20-140. (See editor's note for date change) Reckless driving.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-141. (See editor's note for date change) Speed restrictions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Moreau v. Hill, 111 N.C. App. 679, 433 S.E.2d 10 (1993); Sparks v. Gilley Trucking Co., Inc., 992 F.2d 50 (4th Cir. 1993).

§ 20-141.3. (See editor's note for date change) Unlawful racing on streets and highways.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-141.4. (See editor's note for date change) Felony and misdemeanor death by vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-145. When speed limit not applicable.

CASE NOTES

Cited in Shaw v. v. Stroud, 13 F.3d 791 (4th Cir. 1994).

§ 20-146. Drive on right side of highway; exceptions.

CASE NOTES

But Defendant May Show Cause of Violation Was Not Negligence. — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994).

Applied in Tate v. Christy, 114 N.C. App. 45, 440 S.E.2d 858 (1994).

§ 20-150. Limitations on privilege of overtaking and passing.

CASE NOTES

I. In General.

I. IN GENERAL.

Violation Not Negligence Per Se — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994).

§ 20-157. (See editor's note for date change) Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking firefighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-166. (See editor's note for date change) Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-166.1. (See editor's note for date change) Reports and investigations required in event of collision.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-167.1. (See editor's note for date change) Transportation of spent nuclear fuel.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 11. Pedestrians' Rights and Duties.

§ 20-174. Crossing at other than crosswalks; walking along highway.

CASE NOTES

I. In General.

I. IN GENERAL.

Subsection (a) was inapplicable to a case involving plaintiff who was struck by defendant's truck as she crossed in front of supermarket parking lot because plaintiff was crossing a public vehicular area rather than a roadway. The trial court therefore erred by imposing on plaintiff a duty to yield the right-of-way and by allowing the jury to evaluate plaintiff's conduct using an improper standard of care. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

(a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Violation of this section is a Class 2 misdemeanor. (1965, c. 137; 1969, c. 1012; 1993 (Reg. Sess., 1994), c. 761, s. 17.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, rewrote subsection (b).

Part 12. Sentencing; Penalties.

§ 20-176. (See editor's note for date change) Penalty for misdemeanor or infraction.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

CASE NOTES

Alcoholics Anonymous is not a "treatment program," it is, in fact, a support group for recovering alcoholics. State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. — A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.
(2) The maintenance of his household.
(3) His education.
(4) His court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.

(b) Eligibility. —

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:
  a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
  b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
  c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; and
  d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
  a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. — A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(d) Application for and Scheduling of Subsequent Hearing. — The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. — A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. — Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". — Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. — In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. — If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in

which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. — A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(h) Other Mandatory and Permissive Conditions or Restrictions. — In all limited driving privileges the judge must also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. — A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. — A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. — The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), or G.S. 20-16.1, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3.)

Effect of Amendments. — The 1994 Extra Session amendment, effective May 1, 1994, and applicable to offenses committed on or after that date, designated the introductory language under subsection (b) as subdivision (b)(1); redesignated former subdivisions (b)(1) through (b)(4) as subdivisions (b)(1)a. through (b)(1)d.; and added subdivision (b)(2).

ARTICLE 3A.

Safety and Emissions Inspection Program.

Part 1. Safe Use of Streets and Highways.

§ 20-183.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 3, effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 2, effective October 1, 1994, substituted "Safety and Emissions Inspection Program" for "Motor Vehicle Law of 1947" as the heading for Article 3A.

Part 2. Safety and Emissions Inspections of Certain Vehicles.

§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.

(a) Safety. — A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.

(3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.

(b) Emissions. — A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.
(2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.
(3) It is a 1975 or later model.
(4) It is powered or designed so that it could be powered by gasoline.
(5) It meets any of the following descriptions:
  a. It is required to be registered in an emissions county.
  b. It is part of a fleet that is operated primarily in an emissions county.
  c. It is offered for rent in an emissions county.
  d. It is offered for sale by a dealer in an emissions county.
  e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.
  f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.

(c) Definitions. — The following definitions apply in this Part:
(1) Emissions county. — A county in which the State either is required by federal law to conduct emissions testing or has agreed in its State Implementation Plan submitted to the federal Environmental Protection Agency to conduct emissions testing. The State Environmental Management Commission establishes the emissions counties pursuant to rules adopted under G.S. 143-215.107(a)(6).
(2) Federal installation. — An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency. (1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386; 1973, c. 679, s. 2; 1975, c. 683; c. 716, s. 5; 1979, c. 77; 1989, c. 467; 1991, c. 394, s. 1; c. 761, s. 7; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Cross References. — For note regarding Session Laws 1993 (Reg. Sess., 1994) c. 754, s. 12, payment of expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program, see § 20-183.7.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 9 provides for ensuring motorist compliance with the emissions inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes by a computer matching method from the effective date of that act [July 15, 1994] until October 1, 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 10 provides that the Joint Legislative Transportation Oversight Committee shall review the method by which branch agents of the Division of Motor Vehicles of the Department of Transportation are reimbursed.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 11 provides that the Division of Motor Vehicles shall study the problem of the unlawful transfer of a vehicle inspection sticker from one vehicle to another.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 13 provides that the Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee on the implementation of s. 1 of Session Laws 1993 (Reg. Sess., 1994), c. 754.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 14 provides for expenditure of funds to expand efforts that encourage compliance with fuel tax laws, and for consideration of alternatives to collection of the fuel tax on diesel fuel.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Safety and Emissions Inspections of Certain Vehicles" for "Equipment Inspection of Motor Vehicles" as the heading for Part 2; substituted "Description of vehicles subject to safety or emissions inspection; definitions" for "Equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station" as the catchline of this section; and rewrote the section.

§ 20-183.3. Scope of safety inspection and emissions inspection.

(a) Safety. — A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

(1) Brakes, as required by G.S. 20-124.
(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.
(3) Horn, as required by G.S. 20-125(a).
(4) Steering mechanism, as required by G.S. 20-123.1.
(5) Windows and windshield wipers, as required by G.S. 20-127.
(6) Directional signals, as required by G.S. 20-125.1.
(7) Tires, as required by G.S. 20-122.1.
(8) Mirrors, as required by G.S. 20-126.
(9) Exhaust system, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emission-control devices is included in the emissions inspection rather than the safety inspection.

(b) Emissions. — An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emission control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of the exhaust emissions of the vehicle to determine if the exhaust emissions meet the standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the exhaust emissions analysis. When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.

(c) Reinspection After Failure. — The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 30 days of failing the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was an emissions inspection, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure. (1965, c. 734, s. 1; 1969, c. 378, s. 2; 1971, c. 455, s. 2; c. 478, ss. 1, 2; 1979, 2nd Sess., c. 1180, s. 3; 1981 (Reg. Sess., 1982), c. 1261, s. 1;

1989, c. 391, s. 2; 1991, c. 654, s. 2; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Scope of safety inspection and emissions inspection" for "Inspection requirements" as the section catchline, rewrote subsections (a) and (b), and added subsection (c).

§ 20-183.4. License required to perform safety inspection; qualifications for license.

(a) License Required. — A safety inspection must be performed by one of the following methods:

(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.

(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.

(b) Station Qualifications. — An applicant for a license as a safety inspection station must meet all of the following requirements:

(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection.

(2) Regularly employ at least one mechanic who has a safety inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as a safety inspection mechanic must meet all of the following requirements:

(1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection.

(2) Have a drivers license.

(3) Be of good character and have a reputation for honesty.

(d) Self-Inspector Qualifications. — An applicant for a license as a safety self-inspector must meet all of the following requirements:

(1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.

(2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a safety inspection on the vehicles that are part of the self-inspector's fleet. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "License required to perform safety inspection; qualifications for license" for "Licensing of safety equipment inspection stations" as the section catchline, and rewrote the section.

§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. — An emissions inspection must be performed by one of the following methods:

(1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.

(2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. — An applicant for a license as an emissions inspection station must meet all of the following requirements:

(1) Have a license as a safety inspection station.

(2) Have an emissions analyzer approved by the Environmental Management Commission.

(3) Have equipment to transfer information on emissions inspections to the Division by electronic means.

(4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

(1) Have a license as a safety inspection mechanic.

(2) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the federal Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using an emissions analyzer approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. — An applicant for a license as an emissions self-inspector must meet all of the following requirements:

(1) Have a license as a safety self-inspector.

(2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.

(3) Have, or have a contract with a person who has, an emissions analyzer approved by the Environmental Management Commission.

(4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. — An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. — A safety inspection mechanic license expires four years after the date it is issued. An emissions mechanic inspection license expires two years after the date it is issued. A safety inspection station license, an emissions inspection station license, and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. — A safety or an emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4C. When a vehicle must be inspected.

A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

(1) A new vehicle must be inspected before it is offered for sale at retail in this State.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.

(3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.

(4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.

(5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. — When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Sticker. — When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic performing the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division.

(c) Content of Sticker. — An inspection sticker issued for a vehicle that is subject to a safety inspection only must be a different color from an inspection sticker issued for a vehicle that is subject to both a safety and an emissions inspection. An inspection sticker must indicate when it expires, must be printed with a unique serial number and an official program seal, and must be counterfeit resistant. The side of an inspection sticker that is readable from the interior of a vehicle must contain the following information:

(1) The date the inspection was performed.

(2) The odometer reading when the inspection was performed.

(3) The signature, initials, or other identification of the mechanic who performed the inspection and put the sticker on the windshield.

(d) When Sticker Expires. — An inspection sticker put on a vehicle that did not have an inspection sticker issued under this Part when it was brought in for inspection expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle. An inspection sticker put on a vehicle that had an inspection sticker that was put on under this Part when it was brought in for inspection expires as follows:

(1) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is less than 12 full months from the date of the inspection, the inspection sticker expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle.

(2) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is 12 or more months from the date of the inspection, the inspection sticker expires one year after the expiration date of the inspection sticker the vehicle had when it was brought in for inspection, regardless of whether there are 12 months in this period. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

(a) Requirements. — The Division may issue a waiver for a vehicle that meets all of the following requirements:

(1) Fails an emissions inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is seventy-five dollars ($75.00) if the vehicle is a pre-1981 model and is two hundred dollars ($200.00) if the vehicle is a 1981 or newer model.

(3) Is reinspected and again fails the inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(4) Meets any other waiver criteria required by 40 C.F.R. § 51.360.

(b) Procedure. — To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an inspection sticker.

(c) Repairs. — The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) If the vehicle is a 1981 or newer model, repairs made by an individual who is not engaged in the business of repairing vehicles.

(d) Sticker Expiration. — An inspection sticker put on a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection. (1965, c. 734, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement" for "Supervision of safety equipment inspection stations" as the section catchline, and rewrote the section.

§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was replaced and keep the removed inspection sticker until 30 days after it expires.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours. (1965, c. 734, s. 1; 1975, c. 109; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Businesses that replace windshields must register with Division to get inspection stickers" for "Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates" as the section catchline, and rewrote the section.

§ 20-183.6A. Administration of program; duties of license holders.

(a) Division. — The Division is responsible for administering the safety inspection and the emissions inspection programs. In exercising this responsibility, the Division must:

(1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.

(2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of both the safety inspection and the emissions inspection programs.

(3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.

(4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.

(5) Establish written procedures for the issuance of inspection stickers to persons licensed to perform inspections.

(6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. — A person who is licensed by the Division under this Part must post the license at the place required by the Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.7. Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.

(a) Fee Amount. — The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only	$ 8.25	$1.00
Emissions and Safety	17.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

(b) Self-Inspector. — The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for putting an inspection sticker on a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. — Fees collected for inspection stickers are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Environmental Management of the Department of Environment, Health, and Natural Resources:

Recipient	Safety Only Sticker	Emissions and Safety Sticker
Highway Fund	.75	.00
Emissions Program Account	.00	1.80
Volunteer Rescue/EMS Fund	.15	.15
Rescue Squad Workers' Relief Fund	.10	.10
Division of Environmental Management	.00	.35.

(d) Account. — The Emissions Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle emissions inspection and maintenance program.

(e) Civil Penalties. — Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue. (1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875, s. 4; 1979, c. 688; 1979, 2nd Sess., c. 1180, ss. 5, 6; 1981, c. 690, s. 17; 1981 (Reg. Sess., 1982), c. 1261, s. 2; 1985, c. 415, ss. 1-6; 1985 (Reg. Sess., 1986), c. 1018, s. 8; 1987, c. 584, ss. 1-3; 1987 (Reg. Sess., 1988), c. 1062, ss. 3-5; 1989, c. 391, s. 3; c. 534, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 33(b); 1991 (Reg. Sess., 1992), c. 943, s. 1; 1993, c. 385, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 12 provides for the payment of expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties" for "Charges for inspections and certificates; safety equipment inspection station records" as the section catchline, and rewrote the section.

§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. — A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00):

(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.

(2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.

(3) Attaches an inspection sticker to a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly.

(b) Defenses to Infractions. — Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) The vehicle was in a state of disrepair on the date the inspection sticker expired, the owner has since repaired the vehicle, the vehicle is being driven from the owner's residence or other place where the owner repaired the vehicle to an inspection station, and the owner has not otherwise driven the vehicle since the inspection sticker expired.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. — A person who forges an inspection sticker commits a Class I felony. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Infractions and criminal offenses for violations of inspection requirements" for "Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful inspection certificate; 30-day grace period for expired inspection certificates" as the section catchline, and rewrote the section.

§ 20-183.8A. (Effective until October 1, 1996) Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of the penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and is two hundred twenty-five dollars

§ 20-183.8A is set out twice. See notes.

($225.00) if the vehicle is a 1981 or newer model vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Section Set Out Twice. — The section above is effective until October 1, 1996. For the section as amended effective October 1, 1996, see the following section, also numbered § 20-183.8A.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8A. (Effective October 1, 1996) Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. (1993 (Reg. Sess., 1994), c. 754, ss. 1, 8.)

Section Set Out Twice. — The section above is effective October 1, 1996. For the section as in effect until October 1, 1996, see the preceding section, also numbered § 20-183.8A.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in the second paragraph added the second sentence.

§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. — The Division must take the following action for a violation:

(1) Type I. — For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. — For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. — For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within seven years by the same emissions license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. — It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A Type I violation by an emissions inspector mechanic is considered a Type I violation by the station or self-inspector for whom the mechanic is employed. A Type II or III violation by an emissions mechanic is not automatically a Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine which Type II or Type III violations by an emissions mechanic are also violations by the station or self-inspector.

(d) Missing Stickers. — The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars ($25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b). (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. — It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the vehicle or after performing an emissions inspection in which the vehicle did not pass the inspection.

(2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.

(3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.

(4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.

(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.

(7) Transfer an inspection sticker from one vehicle to another.

(b) Type II. — It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(c) Type III. — It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to any of the following:

(1) Fail to post an emissions license issued by the Division.

(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.

(d) Other Acts. — The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8D. Suspension or revocation of license for safety violations.

The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8E. Administrative and judicial review.

A person whose application for a license or registration is denied, whose license or registration is suspended or revoked, who is assessed a civil penalty, or who receives a warning letter under this Part may obtain an administrative review of the action by the Commissioner by filing with the Division a written request for a hearing before the Commissioner. A request for a hearing must be filed within 10 days after the person receives written notice of the action for which a hearing is requested.

If the action that is the subject of a request for a hearing is the suspension or revocation of an emissions self-inspector license, an emissions inspection station license, or an emissions inspection mechanic license, the Commissioner must hold the hearing within 14 days after the Division receives the request. If the action that is the subject of a request for a hearing is not one of these actions, the Commissioner must hold a hearing within 90 days after the Division receives the request.

After a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder, the Commissioner must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the Commissioner finds that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. After a hearing on any other action, the Commissioner may uphold or modify the action.

Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision by the Commissioner under this section. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

ARTICLE 3B.

Permanent Weighing Stations and Portable Scales.

§ 20-183.11. (Effective October 1, 1994 — See editor's note) Refusal of operator to cooperate in weighing vehicle; removal of excess portion of load.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4.

State Highway Patrol.

§ 20-193: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 18, effective July 16, 1994.

ARTICLE 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

§§ 20-212 through 20-215: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 19, effective July 16, 1994.

ARTICLE 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.4. (Effective October 1, 1994 — See editor's note) Violation of regulations a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-217. (See editor's note for date change) Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

Editor's Note. — Session Laws 1983, c. 779, s. 3 formerly provided that the act should become effective October 1, 1983 and expire October 1, 1985 and that this section should not be effective on and after said date. However, as amended by Session Laws 1985, c. 700, s. 1, Session Laws 1983, c. 779, s. 3 now reads: "This act shall become effective October 1, 1983. G.S. 20-217(f) shall expire October 1, 1987 and shall not be effective on and after that date."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.

(a) Qualifications. — No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by children unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. — It is unlawful to drive a school bus loaded with children over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus loaded with children over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. — A person who violates this section commits a Class 3 misdemeanor. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102; 1979, c. 31, ss. 1, 2; c. 667, s. 36; 1981, c. 30; 1987, c. 337, s. 1; 1989, c. 558, s. 1; c. 771, s. 6; 1991, c. 726, s. 22; 1993, c. 217, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 20.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, added "for school buses and school activity buses" at the end of the section catchline, inserted the subsection catchlines, and rewrote subsections (b) and (c).

§ 20-218.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 21, effective July 16, 1994.

§ 20-218.2. Speed limit for nonprofit activity buses.

It is unlawful to drive an activity bus that is owned by a nonprofit organization and is transporting persons in connection with nonprofit activities over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour. A person who violates this section commits a Class 3 misdemeanor. (1969, c. 1000, s. 2; 1987, c. 337, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 23.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, substituted "nonprofit activity buses" for "activity buses for nonprofit purpose" in the section catchline, and rewrote the section.

§ 20-219: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 24, effective July 16, 1994.

§ 20-219.2. (See editor's note for date change) Removal of unauthorized vehicles from private lots.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

§ 20-231.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 25, effective July 16, 1994.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

CASE NOTES

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.7A. Forms to carry statement concerning perjury.

A person who makes a false affidavit or falsely sworn or affirmed statement concerning information required to be submitted under this Article commits a Class I felony. The Division shall include a statement of this offense on a form that it provides under this Article and that must be completed under oath. (1983, c. 610, s. 3; 1993 (Reg. Sess., 1994), c. 761, s. 26.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, rewrote this section.

§ 20-279.21. "Motor vehicle liability policy" defined.

CASE NOTES

I. General Consideration.
III. Uninsured Motorist Coverage.
IV. Underinsured Motorist Coverage.

I. GENERAL CONSIDERATION.

The manifest purpose of this article, etc. —

The purpose of the Financial Responsibility Act has always been to protect innocent motorists from financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Exclusionary Provisions Contravening Article Are Void. —

The public policy goals of the Financial Responsibility Act apply only when the Act itself is being construed or when determinations are being made regarding the extent to which the Act, as to its mandatory minimum coverages, may override conflicting insurance policy provisions. Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284 (1993).

Classes of Insureds. — There is nothing in this section which indicates that if a person is otherwise covered as a first class insured he loses this coverage if he is covered as a second class insured on another policy. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Interpolicy and Intrapolicy Stacking. — A person living in the household with relatives should be allowed to aggregate or stack, both interpolicy and intrapolicy, the underinsured motorist coverages of the relatives and to collect on those stacked coverages. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Phantom Vehicle. —

The legislature never intended for subdivisions (b)(3) and (b)(4) of this section to provide coverage where plaintiff was injured by an unknown/uninsured motorist without making contact with the unknown motorist's vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

An unidentified motor vehicle is statutorily treated as an uninsured motor vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

"Using" a Vehicle. — Where plaintiff was struck while walking on the shoulder of the road in search of mechanical assistance after the vehicle he was driving broke down, plaintiff was "using" the vehicle at the time of the accident. As such, plaintiff was an insured of the insurance company at the time of the accident. Falls v. North Carolina Farm Bureau Mut. Ins. Co., 114 N.C. App. 203, 441 S.E.2d 583 (1994).

Reducing Defendant's Liability to Injured Plaintiff by Amount of Workers' Compensation Paid to Plaintiff Was Improper. —

Defendant insurance company, insurer of vehicle plaintiff was driving at the time of collision, was not entitled to reduce the limits of its uninsured motorists coverage by any amounts paid or to be paid to plaintiff or on her behalf by her employer's workers' compensation insurance carrier as workers' compensation benefits; employer's worker's compensation insurance carrier was entitled to a lien against all amounts paid or to be paid to plaintiff by defendant insurer of vehicle. Hieb v. St. Paul Fire & Marine Ins. Co., 112 N.C. App. 502, 435 S.E.2d 826 (1993).

Use by Prohibited Party. — This section did not impose coverage when owner's permittee gave possession to a third party who knew that he was prohibited from using the vehicle. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Where the forecast of evidence before the trial court showed there was no collision or contact between the automobile driven by the unknown motorist, which allegedly caused accident, and any other automobile, including that driven by plaintiff's intestate, defendant insurance company was entitled to judgment as a matter of law. Andersen v. Baccus, 335 N.C. 526, 439 S.E.2d 136 (1994).

Applied in Wiggins v. Nationwide Mut. Ins. Co., 112 N.C. App. 26, 434 S.E.2d 642 (1993).

Cited in Cagle v. Teachy, 111 N.C. App. 244, 431 S.E.2d 801 (1993); Hackett v. Bonta, 113 N.C. App. 89, 437 S.E.2d 687 (1993).

III. UNINSURED MOTORIST COVERAGE.

Subrogation Lien. — The workers' compensation carrier for plaintiffs had a subrogation lien on the uninsured motorist policy proceeds paid to plaintiff employee who was injured in an automobile accident occurring while within the scope of employment. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

Stacking Not Required. —

The language in insurance company's policy was unambiguous and straightforward and it did not permit the intrapolicy stacking of its uninsured motorist (UM) coverage; therefore, the UM policy coverages on the three separate vehicles covered by plaintiffs' auto liability insurance policy with defendant insurance company would not be stacked intrapolicy to satisfy husband and wife's damages. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

IV. UNDERINSURED MOTORIST COVERAGE.

Definition of Underinsured does not Incorporate Definition of Uninsured. — The legislature did not intend to fully incorporate the definition of an uninsured motor vehicle into the definition of an underinsured highway vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

State-Owned Vehicles Can Be Underinsured Vehicles. — An underinsured highway vehicle as defined in subsection (b)(4) of this section can include a state-owned vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

Definition of "Person Insured." —

Where plaintiff lived in the same household as his father, the owner of an automobile insurance policy providing underinsured motorist (UIM) coverage for two vehicles, plaintiff was a "person insured" under the policy and was entitled to the same rights to stack coverages intrapolicy as the owner. Miller v. Nationwide Mut. Ins. Co., 112 N.C. App. 295, 435 S.E.2d 537 (1993).

Vehicle Not Included. — An underinsured vehicle, as that term is used in subdivision (b)(4), does not include a tort-feasor's vehicle whose available liability insurance is less than the relevant underinsured motorist (UIM) coverage. Ray v. Atlantic Cas. Ins. Co., 112 N.C. App. 259, 435 S.E.2d 80, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

Stacking Not Required Prior to Amendment. — The 1983 version of subdivision (b)(4), which was prior to 1985 amendment, did not require that the underinsured motorist coverages in the same policy be aggregated or stacked. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 335 N.C. 533, 439 S.E.2d 112 (1994).

Stacking of Coverage—Fleet Policies. — Fleet policies may not be stacked onto nonfleet policies under subsection (b)(4) of this section. Isenhour v. Universal Underwriters Ins. Co., 113 N.C. App. 152, 437 S.E.2d 702 (1993).

Stacking Allowed in Determining Whether Tortfeasor's Car Is an "Underinsured Highway Vehicle." —

Underinsured motorist (UIM) coverage for a nonowner Class I insured under one policy could be stacked with the UIM coverage under another policy in which the party was also a nonowner insured. Mitchell v. Nationwide Ins. Co., 110 N.C. App. 16, 429 S.E.2d 351 (1993), pet. disc. rev. granted, 334 N.C. 164, 432 S.E.2d 363 (1993), aff'd, 335 N.C. 433, 439 S.E.2d 110 (1994).

Family Unit Entitled to Intrapolicy Stacking. —

Automobile accident victim was entitled to stack with his own policy providing underinsured motorist benefits the policies of his father and brother, both interpolicy and intrapolicy. Any amount he received under those policies would be reduced by the amount he received from the tortfeasor's exhausted liability policy. Harrington v. Stevens, 334 N.C. 586, 434 S.E.2d 212 (1993).

No Set Off from UIM Coverage to Extent Workers' Compensation Benefits Paid. —

Where truck, in which plaintiff was riding at the time of the accident, was a business vehicle covered by the terms of the business auto policy with respect to underinsured motorist coverage, the trial court erred in finding that defendant insurance company, the underinsured motorist coverage carrier, was entitled to reduce its coverage by the amount of workers' compensation benefits which the same company paid to plaintiff. Brantley v. Starling, 111 N.C. App. 669, 433 S.E.2d 1, cert. granted, 334 N.C. 687, 436 S.E.2d 370 (1993).

§ 20-279.31. (Effective October 1, 1994 — See editor's note) Other violations; penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-279.33. Self-insurers.

CASE NOTES

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.34: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 27, effective July 16, 1994.

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-284. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

CASE NOTES

Amendment Not Impairment of Right to Contract. — The amendment to this section, which provided a procedure by which an automobile dealer could seek administrative review of its franchisor's refusal to approve a relocation, was a patently reasonable exercise of the State's police power and was not an unconstitutional impairment of the parties' right to contract. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Delivery by Federal Express, with return receipt, was held to be registered mail within the meaning of this section. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

§ 20-308. (Effective October 1, 1994 — See editor's note) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 28, effective July 16, 1994.

§ 20-310. (Repealed effective February 1, 1995) Grounds and procedure for cancellation or nonrenewal of a motor vehicle liability insurance policy; review by Commissioner of Insurance.

(a) As used in this section the following definitions shall apply:

§ 20-310 has a delayed repeal date. See notes.

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(1) "Policy of automobile insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance delivered or issued for delivery in this State covering liability arising from the ownership, maintenance or use of any motor vehicle, insuring as the named insured one individual or husband and wife residents of the same household, and under which the insured vehicle therein designated is of the following type only:

a. A four-wheeled automobile or station wagon that is not used as a public or livery conveyance (which terms shall not be construed to include car pools) nor rented to others;

b. Any other four-wheeled motor vehicle with a load capacity of 1500 pounds or less which is not used in the occupation, profession or business of the insured, nor is used as a public or livery conveyance nor rented to others;

"Policy of automobile insurance" or "policy" shall not apply to any policy issued under the North Carolina Automobile Insurance Plan or to any policy insuring more than four motor vehicles, or to any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place or to any policy providing insurance only on an excess basis, or to any other contract providing insurance to such named insured even though such contract may incidentally provide insurance with respect to such motor vehicles.

(2) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer through the agent who originally placed the policy or his successors or assigns, such renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the maximum limits of coverage provided for under former G.S. 20-279.34(4), whichever is less, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended or the maximum limits of coverage provided for under G.S. 20-279.34(4), whichever is less; provided, however, that any policy with a policy period or term of less than 12 months or any period with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of six months.

(3) "Insurer" means any insurance company, association or exchange authorized to transact the business of automobile insurance in the State of North Carolina.

(b) This section shall apply only to that portion of a policy of automobile insurance providing bodily injury and property damage liability, and uninsured motorists coverage.

(c) No insurer shall cancel or refuse to renew a policy of automobile insurance solely or primarily because of the age, sex, residence,

§ 20-310 has a delayed repeal date. See notes.

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race, color, creed, national origin, ancestry, marital status or lawful occupation (including the military service) of anyone who is insured or solely because another insurer canceled a policy of automobile insurance or refused to write or renew such policy or solely because of any combination of the hereinabove mentioned factors.

(d) No insurer shall cancel a policy of automobile insurance except for the following reasons:

(1) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

(2) The named insured or any other operator who resides in the same household and customarily operates an automobile insured under such policy has had his driver's license suspended or revoked for more than 31 days after the effective date of the policy if said policy had been in effect less than one year or after the last anniversary of the effective date if the policy had been in effect longer than one year.

(3) The named insured or any other operator who resides in the same household and customarily operates an automobile insured under such policy during such policy period is finally convicted of operating a motor vehicle while under the influence of intoxicating liquor or of any impairing drug.

(e) No insurer shall refuse to renew a policy of automobile insurance except for one or more of the following reasons:

(1) The insured has violated any of the material terms or conditions of the policy.

(2) The named insured or any other operator who resides in the same household and customarily operates an automobile insured under such policy has had his driver's license suspended or revoked for more than 31 days after the effective date of the policy if said policy had been in effect less than one year or after the last anniversary of the effective date if the policy had been in effect longer than one year; or is or becomes subject to any physical or mental condition which impairs his ability to operate a motor vehicle.

(3) The named insured or any other operator who resides in the same household and customarily operates an automobile insured under such policy is finally convicted of, pleads nolo contendere or forfeits bail during the policy period for any of the following:

a. Any felony involving the use of a motor vehicle.

b. Homicide, arising out of the operation of a motor vehicle.

c. Operating a motor vehicle while under the influence of intoxicating liquor or of any impairing drug.

d. Leaving the scene of a motor vehicle accident in which the insured is involved without identifying himself and furnishing his address as required by law.

e. Theft of a motor vehicle or the unlawful taking of a motor vehicle.

§ 20-310 has a delayed repeal date. See notes.

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f. A second moving traffic violation by any one person who customarily operates the insured vehicle or an aggregate of four moving traffic violations by all persons customarily operating the insured vehicle within a 12-month period any part of which falls within the policy period, whether or not the violations were repetitions of the same offense or were different offenses.

(4) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

(5) The named insured, or any other operator who resides in his household and who customarily operates an automobile insured under said policy within a 24-month period any part of which falls within the policy period, have been involved as an operator of an automobile in four or more automobile accidents where there is evidence to indicate fault on the part of such operator.

(f) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer has given the policyholder notice at his last known address by certificate of mailing a written notice of the cancellation or refusal to renew. Such notice shall:

(1) Be approved as to form by the Commissioner of Insurance prior to use;

(2) State the date, not less than 60 days after mailing to the insured of notice of cancellation or notice of intention not to renew, on which such cancellation or refusal to renew shall become effective, except that such effective date may be 15 days from the date of mailing or delivery when it is being canceled or not renewed for the reasons set forth in subdivision (d)(1) and in subdivision (e)(4) of this section;

(3) State the specific reason or reasons of the insurer for cancellation or refusal to renew;

(4) Advise the insured of his right to request in writing, within 10 days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer;

(5) Either in the notice or in an accompanying statement advise the insured that operation of a motor vehicle without complying with the provisions of this Article is a Class 2 misdemeanor punishable pursuant to G.S. 20-176(c) and (c1) and specifying the penalties for such violation.

(g) Nothing in this section shall apply:

(1) If the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention by any other means, including the mailing by first-class mail of a premium notice or expiration notice, and the insured has failed to pay the required premium prior to the premium due date;

(2) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be canceled or that he does not wish the policy to be renewed.

§ 20-310 has a delayed repeal date. See notes.

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(3) Repealed by Session Laws 1991, c. 720, s. 65, effective July 16, 1991.

(h) There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew for any statement made by any of them in complying with this section or for the providing of information pertaining thereto except as provided by this section and any applicable federal law.

(i) Notwithstanding any other provision of this section, any insured may, within 10 days after receipt of the notice of cancellation or notice of intention not to renew within 10 days after or receipt of the reason or reasons for cancellation or refusal to renew if they were not stated in the notice, make a written request to the Commissioner of Insurance that the Commissioner of Insurance review the action of an insurer in canceling or refusing to renew the policy of the insured; otherwise, the right of the insured for a review is waived. On receiving a request in writing for a review of the action of such insurer, the Commissioner of Insurance shall immediately notify the insurer involved of the insured's request and the charges involved, if known, and on receipt of the notification and within 10 days thereafter the insurer may make a response in writing in regard to the review. The Commissioner of Insurance shall make such investigation as he deems to be appropriate to determine if the insurer has violated the provisions of this section, and shall either approve the cancellation or nonrenewal of such policy or order the insurer to renew, reissue, or reinstate the policy on such terms as may be just. If the Commissioner of Insurance finds after notice and opportunity for hearing and after appropriate findings of fact, that the insurer has willfully violated the provisions of this section or has acted without reasonable investigation into the grounds for cancellation or nonrenewal, he may order the insurer involved to pay the reasonable expenses and costs of the investigation and review conducted by the Commissioner of Insurance, not to exceed the sum of one thousand dollars ($1,000) and such costs as are ordered paid by the Commissioner of Insurance shall be paid as a condition of the insurer continuing to write automobile insurance business in this State. Any insured or insurer aggrieved by any order or decision of the Commissioner of Insurance may appeal the order or decision under G.S. 58-2-75. All examinations, reviews, and investigations provided by this subsection may be conducted by the Commissioner personally or by one or more of his deputies or employees designated by him for the purpose, and any order entered by such person other than the Commissioner shall have the same force and effect as if entered by the Commissioner himself. All hearings shall be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the person cited to appear at least 10 days before the date designated thereon. The notice shall state the subject of the inquiry and the specific charges, if any. It shall be sufficient to give such notice either by delivering it or by depositing the same in the United States mail, postage prepaid and addressed to the last known address of such insured or insurer. The policy shall remain in full force and effect

§ 20-310 has a delayed repeal date. See notes.

during the pendency of review by the Commissioner of Insurance or the court except where the Commissioner of Insurance has sustained the action of the insurer and except where the cancellation or failure to renew was for nonpayment under subdivision (d)(1) or subdivision (e)(4) of this section, in which case the policy shall terminate as of the date provided in the notice under subsection (f) of this section.

(j) If any provision of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(k) Each insurer shall maintain for a period of three years records of refusals to renew and cancellations and shall, on request, forward to the Commissioner of Insurance copies of every notice or statement referred to in subsection (f) of this section which it shall at any time send to any of its insureds.

(*l*) The provisions of this section shall not apply to any insurer who shall limit the issuance of policies of automobile liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation or business nor shall any insurer be required to renew should the insured become a nonresident of North Carolina. (1957, c. 1393, s. 2; 1963, c. 842, ss. 1-3; c. 964, s. 2; 1965, c. 1135; 1967, c. 857, s. 3; 1971, c. 1205, s. 4; 1985, c. 666, s. 67; 1987, c. 864, s. 25; 1991, c. 720, ss. 65, 70; 1993, c. 409, ss. 19, 20; 1994, Ex. Sess., c. 14, s. 33.)

Cross References. — This section is repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

Section Repealed Effective February 1, 1995. — This section is repealed, effective February 1, 1995, by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, inserted "Class 2" and "punishable pursuant to G.S. 20-176(c) and (c1)" in subdivision (f)(5).

CASE NOTES

Applied in Nationwide Mut. Ins. Co. v. Choice Floor Covering Co., 112 N.C. App. 801, 436 S.E.2d 851 (1993).

§ 20-310.2: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995.

For this section in effect until February 1, 1995, see the main volume.

Cross References. — This section is repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

§ 20-312. (Effective October 1, 1994 — See editor's note) Failure of owner to deliver certificate of registration and plates after revocation; notice of revocation.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313. (See editor's note for date change) Operation of motor vehicle without financial responsibility a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313.1. (Effective October 1, 1994 — See editor's note) Making false certification or giving false information a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 14.

Driver Training School Licensing Law.

§ 20-327. (Effective October 1, 1994 — See editor's note) Penalties for violating Article or regulations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15.

Vehicle Mileage Act.

§ 20-350. (Effective October 1, 1994 — See editor's note) Criminal offense.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15A.

New Motor Vehicles Warranties Act.

§ 20-351. Purpose.

CASE NOTES

Return of Defective Vehicle to Manufacturer Not Required. — Because the Warranty Act neither requires nor prohibits return of the defective vehicle to the manufacturer, in the absence of instructions to the jury regarding ownership of the vehicle if the manufacturer is found to have violated the Warranty Act, the ownership must remain with the plaintiff. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), cert. denied, 335 N.C. 553, 441 S.E.2d 104 (1994).

§ 20-351.2. Require repairs; when mileage warranty begins to accrue.

CASE NOTES

Refusal to Comply. — Whether a manufacturer "unreasonably refused" to comply with this section or § 20-351.3 is a question for the jury when there is substantial evidence to support the claim. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), cert. denied, 335 N.C. 553, 441 S.E.2d 104 (1994).

§ 20-351.3. Replacement or refund; disclosure requirement.

CASE NOTES

Refusal to Comply. — Whether a manufacturer "unreasonably refused" to comply with § 20-351.2 or this section is a question for the jury when there is substantial evidence to support the claim. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), cert. denied, 335 N.C. 553, 441 S.E.2d 104 (1994).

§ 20-351.8. Remedies.

CASE NOTES

Attorney's Fees. — The term "court" as used in subdivision (3) of this section was interpreted to mean the trial judge. Therefore, for purposes of awarding attorney's fees, it is the trial judge, not the jury, that is to make the finding required by subdivision (3). After making such a finding, the court may, in its discretion, award attorney's fees. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), cert. denied, 335 N.C. 553, 441 S.E.2d 104 (1994).

Article 16.

Professional Housemoving.

§ 20-371. (See editor's note for date change) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

§ 20-376. Definitions.

As used in this Article,

(1) "Certificate" means a certificate of public convenience and necessity issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a common carrier by motor vehicle.

(2) "Certificate of Exemption" means a certificate issued by the Division authorizing transportation services which are exempt from economic regulations under the Public Utilities Act.

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(4) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in G.S. 62-260.

(5) "Contract carrier by motor vehicle" means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the North Carolina Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (4) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.

(6) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(7) "Exempt carrier" means any person providing transportation by motor vehicle for compensation which is declared to be exempt from economic regulation by the North Carolina Utilities Commission or the Interstate Commerce Commission.

(8) "For-hire carrier" means any person engaged in the transportation of persons or property by motor vehicle for compensation.

(9) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(10) through (12) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(13) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

(14) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subse-

quent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.

(15) "Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.

(16) "Motor carrier" means both a for-hire carrier by motor vehicle and a private carrier by motor vehicle.

(17), (18) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(19) "Permit" means a permit issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a contract carrier by motor vehicle.

(20) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(21) "Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(22) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, repealed subdivisions (3), (6), (10) through (12), (17), (18), (20), and (22).

Part 2. Authority and Powers of Division.

§ 20-382. Registration of for-hire interstate motor carriers and verification that their vehicles are insured.

(a) Registration. — A motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the Division by doing one of the following:
  a. Filing a copy of the certificate of authority issued to it by the Interstate Commerce Commission allowing it to operate in this State and any amendments to that authority.
  b. Certifying to the Division that it carries only items that are not regulated by the Interstate Commerce Commission.

(2) Verified, in accordance with subsection (b) or (c) of this section, that it has insurance for each for-hire motor vehicle it operates.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification for ICC-Regulated Motor Carriers. — A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State, is regulated by the Interstate Commerce Commission, and designates this State as its registration state must obtain a receipt from the Division verifying that each for-hire motor vehicle the motor carrier operates in any jurisdiction is insured. To obtain a receipt, the motor carrier must apply annually to the Division during the application period and state the number of for-hire motor vehicles the motor carrier intends to operate in each jurisdiction during the next calendar year. The certificate of authority issued to the motor carrier by the Interstate Commerce Commission is proof that the motor carrier has insurance for its for-hire motor vehicles.

The motor carrier must keep a copy of the receipt in each of its for-hire motor vehicles. The motor carrier may transfer the receipt from one for-hire motor vehicle to another as long as the total number of for-hire motor vehicles operated in any jurisdiction and in all jurisdictions does not exceed the number stated on the receipt.

A motor carrier may operate more for-hire motor vehicles in a jurisdiction than stated in its most recent annual application only if the motor carrier files another application with the Division and obtains a receipt stating the increased number. A motor carrier that obtains a receipt for an increased number of for-hire motor vehicles must put a copy of the new receipt in each of its for-hire motor vehicles. The new receipt replaces rather than supplements the previous receipt.

(c) Insurance Verification for Nonregulated Motor Carriers. — A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the Interstate Commerce Commission must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured. To do this, the motor carrier must obtain annually for each for-hire motor vehicle a cab card approved by the Commissioner and a North Carolina identification stamp issued by the Division. To obtain an identification stamp, the motor carrier must apply annually to the Division during the application period for an identification stamp for each for-hire motor vehicle the motor carrier intends to operate in this State during the next 12-month period beginning February 1.

The motor carrier must place the identification stamp on the cab card and keep the cab card in the for-hire motor vehicle for which it was issued. An identification stamp is issued for a specific for-hire motor vehicle and is not transferable from one for-hire motor vehicle to another.

A motor carrier may operate in this State a for-hire motor vehicle for which it did not obtain an identification stamp during the most recent annual application period only if it obtains for that vehicle either a cab card and identification stamp or an emergency permit. A motor carrier may obtain an additional identification stamp after the close of the annual application period by filing an application for it with the Division. An identification stamp issued after the close of the annual application period expires the same date as one issued during the annual application period.

A motor carrier may obtain an emergency permit by filing an application for it with the Division. An emergency permit allows the motor carrier to operate a for-hire motor vehicle in this State without a cab card and identification stamp between the time the motor carrier has applied for an identification stamp and the time the Division issues the identification stamp. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "Registration of for-hire interstate motor carriers and verification that their vehicles are insured" for "Interstate carriers" as the section catchline; and rewrote this section.

§ 20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.

(a) Registration. — A motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the State by doing one of the following:
  a. Obtaining a certificate or a permit from the North Carolina Utilities Commission, if the motor carrier hauls regulated items.
  b. Obtaining a certificate of exemption from the Division, if the motor carrier hauls only items that are not regulated by the North Carolina Utilities Commission.

(2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. — A motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State. (1993 (Reg. Sess., 1994), c. 621, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. — A motor carrier who does any of the following is subject to a civil penalty of seventy-five dollars ($75.00):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. — When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. — Upon receiving a request for a hearing, the Commissioner must schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected must be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. — A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue. (1993 (Reg. Sess., 1994), c. 621, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

§ 20-384. Carriers must comply with safety rules and regulations.

(a) Scope. — The Division may adopt highway safety rules for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.

(b) Infraction. — A motor carrier who fails to conduct a safety inspection of a vehicle as required by 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations, or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00). (1985, c. 454, s. 1; 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1993 (Reg. Sess., 1994), c. 754, s. 6.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Carriers must comply with safety rules and regulations" for "Safety regulations applicable to motor carrier and private carrier vehicles" as the section catchline; added the subsection (a) designation and catchline; in subsection (a) deleted "of Motor Vehicles" following "Division," substituted "adopt" for "promulgate," and deleted "and regulations" following "rules"; and added subsection (b).

Part 3. Fees and Charges.

§ 20-385. Fee schedule.

(a) Amounts. —

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State	$ 1.00
(2) Application by an intrastate motor carrier for a certificate of exemption	25.00
(3) Certification by an interstate motor carrier that it is not regulated by the ICC	25.00
(4) Application by an interstate motor carrier for an emergency permit	10.00.

(b) Reciprocal Agreements. — The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the Interstate Commerce Commission if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "Fee schedule" for "Particular fees and charges fixed; payment" as the section catchline; rewrote subsection (a); and added subsection (b).

Part 4. Penalties and Actions.

§ 20-390. (Effective October 1, 1994 — See editor's note) Refusal to permit Division to inspect records made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-395. (Effective October 1, 1994 — See editor's note) Willful injury to property of motor carrier a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-396. (Effective October 1, 1994 — See editor's note) Unlawful motor carrier operations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-397. (Effective October 1, 1994 — See editor's note) Furnishing false information to the Division; withholding information from the Division.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

October 1, 1954

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Michael F. Easley
Attorney General of North Carolina